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TRANSLATION

OF THE

LAW OF CIVIL PROCEDURE

FOR

CUBA AND PORTO RICO,

WITH

ANNOTATIONS, EXPLANATORY NOTES, AND AMENDMENTS MADE SINCE THE AMERICAN OCCUPATION.

WAR DEPARTMENT,
DIVISION OF INSULAR AFFAIRS,
JANUARY, 1901.

WASHINGTON:
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1901.

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CONTENTS.

	Page.
BOOK I.—Provisions common to contentious and voluntary jurisdiction	1
TITLE I.—Appearance in an action	1
Section I. Litigants, solicitors, and attorneys	1
Section II. Legal aid to the poor	7
TITLE II.—Competency and questions of jurisdiction	15
Section I. General provisions	15
Section II. Rules to determine competency	16
Section III. Questions of competency	24
Section IV. Remedy of complaint against administrative authorities	31
TITLE III.—Applications to civil courts for modification of actions of ecclesiastical courts	32
TITLE IV.—Consolidations	36
Section I. Consolidation of actions	36
Section II. Consolidation of records of proceedings	37
TITLE V.—Challenges	42
Section I. General provisions	42
Section II. Challenge of justices, judges of first instance, and assessors	43
Section III. Challenge of municipal judges	47
Section IV. Challenge of subordinate officials of superior and inferior courts	49
TITLE VI.—Judicial procedure and periods of time	52
Section I. Judicial proceedings in general	52
Section II. Legal working days and hours	53
Section III. Notifications, citations, summonses, and requisitions	54
Section IV. Service of notifications in court room	57
Section V. Letters requisitorial, letters rogatory, letters mandatory, and mandates	58
Section VI. Judicial periods of time, compulsory process, and defaults	61
TITLE VII.—Dispatch, hearing, voting upon, and decision of judicial matters	64
Section I. Ordinary dispatch and hearing	64
Section II. Justices "ponentes"	67
Section III. Voting and decisions in actions	69
Section IV. Manner of adjusting disagreements	71
TITLE VIII.—Manner and form in which judicial decisions shall be rendered	72
Section I. Judgments	72
Section II. Form in which judicial resolutions shall be rendered	74
TITLE IX.—Remedies against judicial resolutions and their effects	76
Section I. Remedies against resolutions of judges of first instance	76
Section II. Remedies against resolutions of audiencias	81
Section III. Remedies against decisions of the Supreme Court	82
Section IV. Provisions common to superior and inferior courts	82

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1. To prosecute the action until he ceases taking part therein for any of the causes mentioned in article 9.

2. To forward to the attorney selected by his client or by himself, when so authorized by the power, all documents, data, and instructions which may be transmitted to him or which he may acquire, doing everything possible to defend the interests of his client, under the liability imposed by law upon agents.

Should he have no instructions or should those given by his client not be sufficient, he shall take such action as may be required by the nature or character of the business.

3. To recover from the attorney who may have ceased administering a business, the copies of the instruments, documents, and other data which may be in his possession, for the purpose of delivering them to the person succeeding him in said administration.

4. At all times to keep his client and the attorney informed of the progress of the business entrusted to him, and deliver to the latter copies of all decisions of which he may be notified.

5. To pay all the expenses or costs caused at his instance, including the lawyers' fees, even though the latter should have been appointed by his principal.[1]

ART. 6. While the solicitor continues in the discharge of his duties he shall receive and sign the summons, citations, orders, and notifications of all kinds, including those of judgments served on him during the course of the action and until the judgment has been executed, which acts shall have the same force as if the principal had taken a direct part therein, and he can not request that said matters be sent directly to his principal.

The following are excepted:

1. The summons, citations, and orders which the law requires to be served on the parties interested in person.

2. Citations which require the compulsory presence of the person cited.[2]

ART. 7. If, after a legal proceeding has been instituted, the principal does not furnish to his solicitor the funds necessary to prosecute it, the latter may request that he be judicially compelled to do so.

This application shall be made to the superior or inferior court taking cognizance of the case, which shall grant the same, fixing the amount it considers necessary and the term within which it is to be furnished, under admonition of judicial compulsion (*apercibimiento de apremio*).

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[1] All costs specified in the schedule have the character of judicial costs (*Decision of May 10, 1882*), and they shall always be preferred and must not be confounded with credits of private individuals.—*Decision of March 31, 1886.*

[2] The citations, summons, etc., served on the solicitor while he continues in his office have the same force of law as if served on the principal himself.—*Decision of May 23, 1878.*

ART. 8. When a solicitor is compelled to demand of his tardy principal the amounts which the latter owes him for his fees and for the expenses he may have incurred in the action, he shall present to the superior or inferior court taking cognizance of the question a detailed account, with the proper vouchers, and shall take oath that the amounts appearing therein and claimed by him are due and unpaid; upon which the court or judge shall order that the principal be required to pay the same, with the costs, within a period not to exceed ten days, under admonition of judicial compulsion.

The heirs of solicitors shall have the same rights as the solicitors themselves with regard to credits of this character which may be left by the latter.

After the payment has been made, the debtor may demand satisfaction for any injury, and if it should appear that the solicitor has presented an excessive account he shall return double the amount of the excess, with all costs arising up to the time when full settlement for the injury is made.[1]

ART. 9. The solicitor shall cease to represent his principal—

1. By reason of the express or implied revocation of the power, as soon as said revocation is entered in the record. Said power shall be considered as impliedly revoked by the subsequent appointment of another solicitor who shall appear in the same proceeding.

2. When the solicitor shall voluntarily abandon the matter, or discontinue the practice of his profession; in either case he shall be obliged to give timely notice to his principals, either judicially or by means of a notarial instrument.

Until the cessation for either of the two above-mentioned reasons shall appear in the record and be declared, the solicitor can not abandon the representation he may have.

3. When the principal has withdrawn from the prosecution or defense made by him.

4. When the principal shall transfer to another his interests in the matter in litigation, as soon as the transfer has been recognized by a resolution or final ruling, with a hearing of the opposite party.

---

[1] When a power is granted as a legal representative of a third person, the latter must be considered as the principal and his heirs are the real debtors against whom the solicitor must bring his action.—*Decision of June 8, 1886.*

According to a royal decree of September 25, 1889, the provisions contained in this article are not applicable to municipalities, in accordance with the provisions of article 143 of the municipal law of October 2, 1877.—*Decision of September 25, 1887.*

The chamber of the audiencia in requiring a solicitor to pay double the excess charged in a sworn account has correctly applied the third paragraph of article 8, on which the debtor based his right; because the declaration to the effect that the account was excessive necessarily carries with it as a penalty the return of double the excess and the payment of all the costs arising until full settlement for the injury is made.—*Decision of October 4, 1888.*

5. When the character in which the principal appeared in the action has ceased.

6. Upon the conclusion of the action or proceeding for which the power was given, if given for that specific purpose only.

7. By reason of the death of the principal or of the solicitor.

In the former case the solicitor shall be obliged to inform the judge or court of the occurrence as soon as he receives notice thereof, duly proving the death, in order that his representation may be considered as ended, and if a new power executed by the heirs or representatives of the deceased should not be presented, the judge or court shall order that they be cited to appear in the proceedings within the period which may be fixed, under the proper admonition.

If the solicitor should die, the principal shall be informed thereof, for the purposes mentioned.[1]

ART. 10. The litigants shall be guided by attorneys legally qualified to practice their profession in the superior or inferior court taking cognizance of the proceedings. No petition shall be acted upon which does not bear the signature of an attorney.

The following are the only exceptions:

1. Proceedings to avoid litigation.

2. Actions of which municipal judges take cognizance in first instance.

3. Proceedings of voluntary jurisdiction.

In the last case the aid of attorneys is discretional.

4. Instruments for the purpose of entering an appearance in an action, requesting judgment in default, judicial compulsion, extension of time, publication of evidence, fixing of hearings, their suspension, appointment of experts, and any other acts of mere practice.

When the suspension of hearings, extension of time, or action requested is based on causes which relate specially to the attorney, the latter shall also, if possible, sign the instrument.

ART. 11. Notwithstanding the provisions contained in articles 4 and 10, the solicitors as well as the attorneys may attend a proceeding to avoid litigation in the character of representatives or *hombres buenos*,[2] or as assistants of the persons interested in oral actions, when the parties interested spontaneously desire to make use of their services.

In such cases, if the costs be taxed in favor of the party who has made use of a solicitor or attorney, they shall not include the fees of either.[3]

ART. 12. The attorneys may demand from the solicitor, and, if the

[1] The course of an action in which two persons have the same representative must not be interrupted on account of one of the parties revoking the power he has given the solicitor.—*Decision of October 20, 1882.*

[2] In matters of conciliation, it applies to the two persons, one chosen by each party, to assist the constitutional alcalde in forming his judgment of reconciliation, *Art. 1, chap. 3, Decree of October 9, 1812.*

[3] article 424 of this law.

latter should not have taken part in the action, from the person whose defense they conduct, the payment of the fees they may have earned in the action, presenting a detailed memorandum thereof and taking oath that they are unpaid.

When this application is made in time, the judge or court shall admit it in the manner prescribed in article 8; but if the debtor should allege that the fees are excessive, they shall first be regulated, in accordance with the provisions of articles 426 et seq.[1]

SECTION II.—*Legal aid to the poor.*

ART. 13. Justice shall be gratuitously administered to poor persons who have been declared as entitled to this benefit by a superior or inferior court.[2]

ART. 14. Persons declared poor shall enjoy the following privileges:

1. The right to use in their defense stamped paper of their class.

2. The right to have an attorney and a solicitor appointed, without being obliged to pay them any fees or charges.

3. Exemption from the payment of all kinds of charges to the assistants and subaltern officials of the superior and inferior courts.

4. To give promise under oath to pay if their fortune should improve, instead of making the deposits necessary in order to request and obtain relief.

5. The right to have all letters rogatory and other communications requested by them acted upon, and complied with *de oficio*, should they demand it.[3]

ART. 15. The following only can be declared poor:

1. Those who depend for a living upon an uncertain wage or salary.

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[1] This action is barred after three years (according to article 1967 of the Civil Code); but the appointment of an attorney at a stated salary for any services which may be required is an industrial lease contract, the actions relating to which are not barred for twenty years, as all personal actions according to law 5, title 8, book 11, of the Novísima Recopilación.—*Decision of December 21, 1885.*

The Civil Code fixes 15 years for the prescription of personal actions for which a special period of prescription is not fixed (*art. 1964*).

[2] According to various administrative provisions and decisions of the supreme court, charitable institutions, as well as religious schools, must be considered poor persons (*Royal Order of December 21, 1857*).

Parochial churches do not enjoy this privilege unless they prove that they are poor.

With regard to foreigners there is some doubt as to this question; but the ordinary and reasonable interpretation is that they may enjoy this privilege, as they are granted the same civil rights as Spaniards; but in order to avoid doubts, some treaties make an express stipulation to this effect.

[3] According to the Royal order of August 31, 1863, still in force on the subject, there shall be inserted free of charge in the proper *Diarios Oficiales* such judicial notices which are required by the nature of the proceeding. When the publication is to take place in the *Boletin Oficial*, the announcement shall be forwarded to the governor of the respective province.

2. Those who depend for a living upon a permanent salary or wage, from whatsover source derived, which does not exceed double that received by a laborer in the locality of the habitual residence of the applicant.

3. Those who depend for a living solely upon rents, farming, or stock raising the proportionate proceeds of which do not exceed the wages of two laborers in the place of their habitual residence.

4. Those who gain their livelihood solely through the exercise of an industry or from the product of any commerce on which they pay a tax lower than that fixed in the following scale:

In the city of Havana, 150 pesetas.

In the capitals of the other provinces of the island of Cuba, 100 pesetas.

In the capital of the island of Porto Rico, 100 pesetas.

In the seats of judicial districts of the islands of Cuba and Porto Rico, 50 pesetas.

In the other towns of both islands, 25 pesetas.

5. Those who have all their property under attachment, or who have made a judicial assignment thereof to their creditors, and who are not engaged in any industry, trade, or profession, and not included in the provisions of article 17.

In such cases, if any property should remain after the creditors have been paid, it shall be applied to the payment of the costs incurred at the instance of the debtor represented as a poor person.[1]

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[1] (*a*) This article must be understood as subordinated to article 17, and therefore it is proper to refuse the benefit if the court shall deduce from the visible signs of wealth that the applicant has means which exceed double the wages of a laborer.—*Decisions of the Supreme Court of February 18, 1870; September 22, November 18 and 21, 1879; January 10, March 29, and June 24, 1880; February 11, 1881; December 15, 1883, and others.*

(*b*) An appeal for annullment of judgment does not lie from the decision granting permission to prosecute or defend as a poor person.—*Decision of May 10, 1881.*

(*c*) A person who lives exclusively on a pension of 20 reales per day, left her by will for herself and her three children, must be granted this right.—*Decision of October 25, 1880.*

(*d*) In order to decide whether the person requesting permission to prosecute or defend as a poor person who has acted in his own name is entitled thereto or not, there can not be taken into consideration the tax which he pays as the manager of an association.—*Decision of September 9, 1882.*

(*e*) The refusal to grant the benefit can not be based on the fact that the person interested should pay an industrial tax of 40 pesetas per annum, although he does not do so, the courts being obliged to consider only whether the tax is or is not paid or without being allowed to declare that it should or should not be paid, which is a matter of the exclusive jurisdiction of the administration.—*Decision of October 31, 1884.*

(*f*) The habitual residence referred to in article 15 of the Law of Civil Procedure, for the purposes of the benefit of poverty, must be that which the person interested has at the time he requests said benefit, and not the place where he may have resided for a longer period in former times.—*Decision of May 30, 1883.*

ART. 16. When a person has two or more of the means of livelihood mentioned in the foregoing article, all of them shall be included in the computation of the income, and permission to prosecute or defend as a poor person shall not be granted him if the total thereof exceeds the amounts fixed in the foregoing article.

ART. 17. Permission to prosecute or defend as a poor person shall not be granted to a person included in any of the cases mentioned in article 15, when it appears to the judge from the number of domestics in his service, the rent of his residence, or from any other visible signs, that his means exceed an amount equal to twice the wages of a laborer in his respective locality.[1]

ART. 18. Neither shall permission to prosecute or defend as a poor person be granted to a litigant who enjoys an income which, added to that of his spouse, or to that arising from the property of his children, the usufruct of which he enjoys, amounts altogether to a sum equivalent to the wages of three laborers at the place of the habitual residence of the family.[2]

(*g*) All litigants shall be considered wealthy until they prove the contrary.—*Decision of November 12, 1883.*

(*h*) It is incumbent upon the litigant to prove the amount of the wages of a laborer in his locality.—*Decision of June 3, 1887.*

(*i*) The children born of a first marriage of a woman whose husband is wealthy are entitled to the benefit of poverty, because the conjugal property of the second marriage is not liable for the litigation instituted in the interest of the issue of the first marriage.—*Decision of April 18, 1893.*

(*j*) The benefit of poverty is individual and does not extend, therefore, to any collectivity, such as industrial and commercial associations, unless each and every one of their members prove that they are poor.—*Decisions of April 15, 1879; June 3, 1880, and July 9, 1881.*

(*k*) A person who is deprived of his property by virtue of a judicial attachment, and retains the product and rent thereof, can not allege that *all* his property is attached, as required by number 5 of article 15 of the Law of Civil Procedure, for the purpose of securing the benefits of articles 13 and 14 thereof.—*Decision of October 14, 1886.* The same is the case when the property is mortgaged or given as security.—*Decision of September 18, 1865.*

[1] The words "when it appears to the judge" used in this article do not refer exclusively to the judge of first instance, but also to the superior or inferior court taking cognizance of the case.—*Decision of September 23, 1882.*

[2] (*a*) The privilege to prosecute or defend as a poor person shall not be granted to a woman who has a wealthy husband, because the duties inherent to the marriage affect the latter.—*Decision of June 3, 1865.*

(*b*) Neither shall it be granted to the woman who receives an income which, together with that of her husband, is equivalent to the wages of two laborers (now of three) in the locality where they reside.—*Decisions of June 17, 1865; September 18, 1865; January 26, 1869, and November 16, 1881.*

(*c*) In legal proceedings between spouses, the unity of person and litigant disappears, and, as a necessary consequence, the incomes of each can not be added together, nor can the external signs be considered in common for the purpose of obtaining a sum of money, nor signs of wealth which do not exist separately; but in such cases the poor woman having a wealthy husband has a right to require the husband to

ART. 19. When several persons individually entitled to defense as poor persons unite in an action, they shall be authorized to litigate as such, even though the united means of all of them exceed the amounts prescribed.

ART. 20. Permission to prosecute or defend as a poor person shall be granted only for the purpose of protecting one's own rights.

The assignee who has this right can not make use thereof to litigate the rights of the assignor, or those which he may have acquired from a third person not having said right, excepting when it was acquired by virtue of an inheritance.

ART. 21. The declaration of poverty shall always be requested of the superior or inferior court taking cognizance, or which is competent to take cognizance of the action or business with regard to which said permission is desired, and it shall be considered as an issue incidental to the principal question.[1]

ART. 22. When the person requesting the declaration of poverty intends to institute an action, said action shall not be commenced until the issue of poverty has been finally decided.

However, judges shall consent to the institution of proceedings without costs, which, if postponed, would cause irreparable injury to the plaintiff, but the course of the action must be suspended immediately thereafter.

ART. 23. When the application to prosecute as a poor person is made by the plaintiff or to defend as a poor person by the defendant at or after the time of answering the complaint, the same shall be passed upon as a separate issue at the cost of the person making the application.

In such case the continuation of the principal action may be suspended only with the consent of both parties.

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make her an allowance for the purpose of paying the costs of her action, and even though the litigation with her husband extinguishes the personal unity, it does not extinguish the right of the wife to enjoy the common income which the husband retains.—*Decision of June 14, 1887.*

(*d*) When the father is wealthy, the son who is under his power can not be granted permission to litigate as a poor person with a third party, because, although the right to defend as a poor person is personal, this principle does not exclude the necessity of taking into consideration the attendant circumstances in special cases, as is the case with persons whose rights are inseparable from those of others, such as married women and persons under the patental power, and others.—*Decision of February 16, 1876.*

A decision of September 21, 1888, repeats the doctrine that the benefit can not be granted to a wealthy father, in a legal sense, to appear in an action in the name of his poor children, because the duty to defend the property of the children in court is inherent to the parental authority.

[1]The issue of poverty raised and decided in a court does not determine the competency of the same to take cognizance of the main issue, the competency for the poverty being subordinated to the jurisdiction of the principal action.—*Decision of March 5, 1863.*

ART. 24. If the plaintiff should not have requested permission to prosecute as a poor person before bringing his action, and requests it subsequently, it can not be granted unless he duly proves that he has become poor after having brought his action.

ART. 25. The litigant who has not been represented as a poor person in the first instance, and desires to enjoy this privilege in the second, must prove that subsequently to the former, or during the course thereof, he has reached a condition of poverty. Should he not duly prove this fact, his application shall not be granted.[1]

ART. 26. The rule laid down in the foregoing article is also applicable to a person who, not having prosecuted or defended as a poor person in the second instance, makes the application to be so represented for the purposes of taking or prosecuting an appeal for annullment of judgment.

In such case he shall be required to make the deposit, if he should not have made his application for legal aid to the poor, before the citation for judgment in the second instance.

ART. 27. Any person making formal application for the declaration of poverty shall at once be defended as such, and an attorney and solicitor shall be assigned to him *de oficio* if he should request it, without prejudice to what may subsequently be decided.

An attorney and solicitor shall also be assigned *de oficio* to the person who requests it for the purpose of filing a petition to secure permission to prosecute or defend as a poor person.

ART. 28. This petition shall be drafted in the manner prescribed in article 523 for ordinary petitions, and shall state in addition—

1. The native town of the petitioner, his present domicile, and his residence during the previous five years.

2. His status (whether married or single), age, profession or trade, and means of livelihood.

3. If married or a widower, the name and native town of his spouse and the children he may have.

4. The house or room in which he resides, stating the street and number and the rent he pays.

5. The property of his spouse and of his children, the usufruct of which he enjoys and the income it produces.

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[1] (*a*) Permission to prosecute or defend as a poor person may be requested after the conclusion of the second instance, and the decision, which does not so recognize violates the provisions of said article.—*Decision of December 9, 1882.*

(*b*) The mortgage of all the property belonging to a person for the guaranty of a loan—that is, the contraction of a mortgage loan—is not sufficient to warrant the granting of this benefit, because said action may be explained by reasons of different kinds and does not prove that the person who appeared as a wealthy person in the first instance has become poor subsequently thereto, and for the reason that the mortgage, even though under the hypothesis that it affects all the property, can not be confounded with the total attachment of said property, depriving the person of the income therefrom.—*Decision of March 12, 1887.*

6. And he shall attach a certificate issued by the competent authority or official that he has not paid a tax of any kind whatsoever during the current fiscal year and the preceding one, or of the amount he does pay, attaching in the latter case the receipts for the last quarter he may have paid, and another certificate, in a proper case, showing whether he does or does not appear in the electoral lists, and if so, in what character.

ART. 29. Petitions which do not contain the requisites mentioned in the foregoing article shall not be admitted.

If the petitioner shall allege that he could not procure the certificates mentioned in number 6 of said article, the judge shall call for them *de oficio*, but the petition shall not be taken into consideration until they are attached to the record.

ART. 30. The petitions for permission to prosecute or defend as a poor person shall be heard and decided according to the procedure established for other incidental issues, with a hearing of the opposite party or parties and of the representative of the department of public prosecution on behalf of the State.

If this petition be filed before the action is brought, those who are to make answer thereto shall be summoned to appear for the purpose within nine days.

If the opposite party should not appear it shall be heard with the attendance of the representative of the department of public prosecution.

ART. 31. If the petition for permission to prosecute or defend as a poor person should be denied, the costs of the first instance shall be taxed against the petitioner.

In case of an appeal, those of the second instance shall be taxed against the proper person in accordance with law.

ART. 32. As soon as the judgment is final, the taxation of the costs shall be made, including that of the stamped paper, and they shall be collected by means of judicial compulsion.

ART. 33. The decision granting or refusing permission to prosecute or defend as a poor person does not produce the effects of a *res judicata*.

At any stage of the action the party in interest may raise a new issue for the revision or annulment thereof, provided that he secures to the satisfaction of the judge the costs which might be taxed against him if said action be not successful.

The department of public prosecution shall not be required to make this deposit if it raises said issue.

ART. 34. In the case of the foregoing article permission to prosecute or defend as a poor person shall not be granted to a person to whom it has once been denied, unless he shall fully prove that he has become poor subsequent to the decision which previously refused to grant him said privilege.

His new petition shall not be accepted unless it is based on said reasons.

ART. 35. The declaration of poverty made during one action can not be made use of in another, if the opposite party should object.

If said party should object, the hearing of the issue must be renewed, a new decision with regard to the poverty being rendered in which the objecting party shall be cited and heard.

ART. 36. A declaration of poverty made in favor of any litigant shall not release him from the obligation of paying the costs taxed against him, if property should be found upon which to levy therefor.

ART. 37. If the person granted permission to prosecute as a poor person should be successful in the action which he may have brought, he shall be obliged to pay the costs incurred in protecting his interests, provided that they do not exceed one-third of the amount he may have obtained by virtue of the suit or complaint.

If the costs should exceed said one-third, they shall be reduced proportionately.

ART. 38. Should there not be sufficient property to cover the charges of the treasury and the fees of the attorneys, solicitors, and other persons interested in the costs, the proceeds shall be proportionately divided among them.

ART. 39. The person granted permission to prosecute or defend as a poor person shall also be obliged to pay the costs mentioned in article 37 if within three years after the conclusion of the action his fortune should improve.[1]

His fortune shall be considered to have improved—

1. If he has obtained a permanent salary, wages, income, or property, or become engaged in farming or stock raising, the profits of which exceed an amount equal to the wages of four laborers in the locality.

2. If he pays a tax amounting to twice the sum mentioned in number 4 of article 15.[2]

ART. 40. A person who has been granted permission to prosecute or defend as a poor person may make use of the services of a solicitor and attorney selected by himself, if they accept the charge.

Should they not do so they shall be appointed by the court (*de oficio*), but subject to the provisions contained in the following articles.

ART. 41. The person who has obtained permission to prosecute an action or file a complaint as a poor person must present to the court, on common paper or on stamped paper of poor persons, a detailed

[1] After three years have elapsed the obligation to pay attorneys, court clerks, etc., their charges and fees, is prescribed.—*Civil Code, art. 1967, par. 1.*

[2] As an action demanding payment can not be brought before there exists the obligation to pay, and as poor persons are not obliged to pay the fees until their fortune betters, it is evident that the period of three years for its limitation must be counted from the latter date.—*Decision of October 15, 1885.*

statement of the facts on which he bases his right, and the documents or a description of the manner in which he intends to prove the same.

ART. 42. As soon as the person who has obtained permission to prosecute and defend as a poor person has fulfilled the provisions contained in the foregoing article, he shall be assigned a solicitor and an attorney *de oficio* to act on his behalf and in his defense, and the record shall be delivered to the solicitor, who shall hand it to the attorney for examination.

ART. 43. If the attorney should consider that the facts contained in the statement are insufficient, he may request, within ten days, that the person interested be required to amplify or elucidate the points which he may designate.

ART. 44. When, with or without such amplification, the attorney should consider that the poor person has not a good cause of action, he may withdraw from the defense, informing the court thereof within ten days in a succinct document, with the reasons for his action.

ART. 45. In such case the court shall forward the record to the College of Attorneys (bar association) in order that two practicing attorneys of those who pay the three highest tax quotas may give their report as to whether or not the person who has been granted permission to prosecute as a poor person has a good cause of action.

Should there be no college, the judge shall designate two of the oldest attorneys of the same court to render said report, and if there should be no qualified attorneys he shall forward the papers in the case to the nearest College of Attorneys through the proper judge.

ART. 46. If the report of said two attorneys should agree with that of the attorney appointed *de oficio*, the person interested shall not be granted permission to prosecute or defend as a poor person in said matter, without prejudice to his right to bring the action as a wealthy person.

ART. 47. When the two attorneys, or one of them, should consider that there is a good cause of action, or that, at least, the right of the person declared poor is doubtful, another attorney shall be assigned him *de oficio*, who will be obliged to undertake the defense.

ART. 48. If the defendant should be granted permission to appear as a poor person, and if the attorney who is to undertake the defense should withdraw therefrom on account of his belief that said defendant has not a good cause of action, he shall inform the court within six days, which shall order the appointment of another attorney.

If the latter should also excuse himself for the same reason, the matter shall be placed in the hands of the *promotor fiscal* (if he should not be a party), for his statement as to whether the poor person has or has not a good cause of action.

If the department of public prosecution were a party this report shall be made by an attorney not of poor persons selected by the col-

lege, where there is any, and in the absence of such college, by the judge.

If the *promotor fiscal*, or the third attorney in a proper case, should consider that the poor person has not a good cause of action, the obligation of the attorney to conduct the defense gratuitously shall cease; but if he considers that the claim is good, a third attorney shall be appointed *de oficio*, who can not excuse himself from conducting the defense.

The same shall be done when the plaintiff applies by petition and receives permission to prosecute as a poor person after the complaint has been answered, or in the case of any of the parties during the course of the second instance.

ART. 49. Attorneys who should not make the statements referred to in articles 43, 44, and 48 within the period fixed, shall be considered as having accepted the defense and can not excuse themselves except for the reason of having ceased to practice their profession.

ART. 50. The attorney who has undertaken to conduct the defense of a party as a wealthy person, afterwards declared poor, shall be obliged to continue the defense in the latter character when there are no attorneys for poor persons in the court, qualified to conduct it.

TITLE II.

COMPETENCY AND QUESTIONS OF JURISDICTION.

SECTION I.—*General provisions.*

ART. 51. The ordinary judicial courts shall be the only ones competent to take cognizance of civil disputes occurring within the territory of the islands of Cuba and Porto Rico between Spaniards, between foreigners, and between Spaniards and foreigners.

ART. 52. The only exceptions from the provisions contained in the foregoing article are the preliminary steps in intestate and testamentary proceedings with regard to estates of soldiers dying in the field, and of sailors belonging to the navy dying at sea, whose cognizance pertains to the commanders and authorities of the army and navy.

These preliminary steps shall be confined to the burial of and obsequies over the remains of the deceased, the making of the inventory, and custody of his property, books, and papers, and their delivery to the legatees or devisees, or to the heirs of the intestate within the third civil degree, provided they are of age and there be no objections made.

Otherwise, and when the heirs have not appeared, or when it should be necessary to continue the proceedings, the papers shall be delivered to a court competent to take cognizance of the testamentary or intestate proceedings, the property, books, and papers inventoried being placed at the disposal of the court.

ART. 53. In order that judges and courts may be considered as having jurisdiction it is necessary:

1. That the right to take cognizance of the action, or of the proceedings in which they take part, be vested by law in the authority they exercise.

2. That the right to take cognizance of the action or proceeding be vested in them in preference to other judges or courts of the same class.

ART. 54. Civil jurisdiction may be vested in any judge or court which, by reason of the matter, of the amount in litigation and of his or its rank in the judicial service, may be competent to take cognizance of the matter submitted to the same.

ART. 55. The judges and courts who are competent to take cognizance of an action shall also have jurisdiction over the exceptions taken therein, over counterclaims in proper cases, over all incidental issues, and to enforce their rulings and decisions.[1]

SECTION II.—*Rules to determine competency.*

ART. 56. Any judge impliedly or expressly agreed upon by the litigants shall be competent to take cognizance of the suits arising from actions of all kinds.

This submission, however, can only be made to a judge exercising ordinary jurisdiction and who is competent to take cognizance of questions similar to and of the same kind as the one submitted.[2]

ART. 57. By an express submission shall be understood that made by the parties in interest clearly and in definite terms renouncing their own rights, and unequivocally designating the judge agreed upon to determine the question.[3]

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[1] (a) The cognizance of a claim of *litis expensas* in consequence of an ordinary action instituted by the wife to compel the husband to turn over to her the administration of the property in addition to the dowry or *parapherna*, pertains to the judge by whom the ordinary action should be heard.—*Decision of September 27, 1890.*

(b) In an action brought requesting the increase of alimony, the judge who originally fixed the alimony is competent, because it is an issue in the first proceeding.—*Decision of October 21, 1887.*

[2](*a*) The judge or court impliedly or expressly agreed upon by the litigants shall be competent to take cognizance of the suits arising from the exercise of civil actions, provided that he has jurisdiction, etc.—*Decisions of April 2, 1877, April 13, 1891, February 5, 1892, and others.*

(*b*) The judge agreed upon by the litigants shall be competent to take cognizance of suits arising from the exercise of all kinds of actions.—*Decisions of April 20, 1887, February 5, 1892, and others.*

(*c*) The heirs of a person submitting to a court can not refuse to appear before the same.—*Decision of October 23, 1882.*

[3] If the submission is made by means of a public instrument, until said instrument is invalidated by a final judgment, it shall be of sufficient force to attribute competency in the court designated therein.—*Decisions of February 20, June 26, September 27, and October 25, 1880.*

ART. 58. An implied submission is made:

1. By the plaintiff, by the act of filing his complaint before the judge.

2. By the defendant when, after his appearance is entered in the action, he takes any further steps therein, except to formally object to the jurisdiction of the judge by declinature.[1]

ART. 59. In towns where there are two or more judges of first instance, the distribution of the business shall determine the competency thereof, and the litigants can not for themselves select one of said judges to the exclusion of the others.

ART. 60. The express or implied submission to a court for the first instance shall be understood as having been made for the second instance to the hierarchical superior of the same, which is to take cognizance of the appeal.

ART. 61. In no cases can the parties submit any matter on appeal to a judge or court other than one to which the court which took cognizance of the case in first instance is subordinated.

ART. 62. With the exception of the cases of express and implied submission referred to in the foregoing articles, the following rules shall apply:

1. In personal actions, the competent judge shall be that of the place where the obligation is to be performed, and in his absence that of the domicile of the defendant or of the place of the contract, at the election of the plaintiff, if said defendant be found there, even accidentally, and process can be served upon him.

When the action is simultaneously brought against two or more persons residing in different towns who are severally or jointly liable, no place for the performance of the obligation having been agreed

[1] *Declinature* is the term applied to the privilege which a party has, in certain circumstances, to decline judicially the jurisdiction of the judge before whom he is cited.—*Bell's Dic. and Digest of the Law of Scotland, 7th ed.*

When the defendant has not entered his appearance in the action nor taken any part therein whatsoever it can not be said that he has impliedly submitted thereto.—*Decision of December 20, 1886.*

When the defendant, in answering the complaint, takes the exception of incompetency there is no implied submission.—*Decision of April 17, 1886.*

It is not sufficient to allege incompetency, but the defendant must make an issue of the incompetency in order not to be subjected thereto, as any other action subjects him to the jurisdiction of the court before which the action was brought.—*Decision of May 23, 1878.*

A defendant who does not object to the competency of a judge to whom the plaintiff applies for a declaration of poverty, acknowledges that he is competent to take cognizance of the principal action, in accordance with article 187 of the former law of civil procedure which accords with article 21 of the present procedure.—*Decision of October 14, 1881.*

A creditor who, before instituting an action, applies to the court requesting that his adversary confess the debt, is subject to the jurisdiction of said court and can not enter suit for payment in another court.—*Decision of April 14, 1884.*

upon, the judge of the domicile of any of the defendants shall be of competent jurisdiction, at the election of the plaintiff.

2. In real actions involving personal property or chattels, the judge of the place where it is located shall be of competent jurisdiction, or the judge of the domicile of the defendant, at the election of the plaintiff.

3. In real actions involving real estate the judge of the place where the thing in litigation is situated shall be of competent jurisdiction.

When a real action involves several real properties, or one only situated in different judicial districts, jurisdiction is vested in the judge of any of the places within the jurisdiction of which the property is situated, at the election of the plaintiff.

4. In mixed actions the competent judge shall be the one of the place where the things are situated, or that of the domicile of the defendant, at the election of the plaintiff.[1]

ART. 63. In order to determine competency, in cases other than those mentioned in the foregoing articles, the following rules shall apply:

1. In actions involving the civil status of a person the judge of the domicile of the defendant shall be competent.

2. In actions involving the rendition and settlement of accounts of administrators of property of another, the judge of competent jurisdiction shall be the one of the place where the accounts are to be rendered, and if said place should not be determined, that of the domicile of the principal or owner of the property, or that of the place where the duties of the administrator are performed, at the election of said owner.

3. In actions upon guaranties or upon the performance of obligations prior thereto, jurisdiction is vested in the judge competent to take cognizance, or who is already taking cognizance, of the principal obligation involved.[2]

4. In counterclaims or cross complaints (*reconvención*) the competent judge is the one taking cognizance of the main action.

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[1] In the absence of submission the judge of the place where the obligation is to be performed shall be competent to take cognizance of personal actions, and said place, when not specified, shall be that where what has been stipulated has begun to be fulfilled.—*Decision of April 16, 1888.*

The judge of the place where the obligation is to be performed must always be preferred to that of the domicile of the defendant.—*Decision of January 3, 1885.*

If no stipulation has been made to the contrary, the amount of the contract obligation must be paid in the place where the contract was executed.—*Decision of February 12, 1883, and June 11, 1889.*

When a person dies and another pays the funeral expenses the debt must be paid in the place of the demise, and the judge thereof is competent.—*Decision of May 5, 1885.*

The judge competent to take cognizance of actions brought to recover fees shall be the one of the place where the services were rendered for which the fees are charged.—*Decision of February 27, 1885.*

[2] When the exercise of a real action is in question, the judge competent to take cognizance thereof shall be that of any of the places where the charged property is situated, at the election of the plaintiff.—*Decision of January 24, 1889.*

This rule is not applicable when the import of the counterclaim exceeds the amount involved in actions over which the judge taking cognizance of the first claim has jurisdiction, in which case the counterclaimant or cross complainant shall reserve the right to bring the action in the proper court.

5. In testamentary or intestate proceedings the judge of the last place of residence of the deceased shall be competent.

If the last place of residence should be a foreign country, then jurisdiction is vested in the judge of the last place of residence of the deceased within Spanish territory, or where the greater portion of his property is located.

The foregoing shall not impair the power of the judges of first instance or municipal judges of the place of demise, to take the measures necessary for the obsequies over the remains and the burial of the deceased; and, in a proper case, that of the judge within whose jurisdiction property of the deceased may be situated, to take the measures necessary to care for and safely keep the same, as well as his books and papers, forwarding an account of his action to the judge of competent jurisdiction in the testamentary or intestate proceedings and abandoning his jurisdiction in the matter.[1]

6. The foregoing rule shall also apply to testamentary proceedings the object of which is the distribution of the property among the poor, relatives, or other persons designated by the testator, without indicating their names.

When the purpose of the proceedings is the adjudication of religious bequests or other ancient institutions, the competent judge shall be that of any of the places within whose jurisdiction the property may be situate, at the election of the plaintiff.

7. In proceedings relating to inheritances, their distribution, the disposition of legacies, universal and singular fideicommissa,[2] or trusts

[1] The cognizance of testamentary and intestate proceedings is vested in the judge of the last residence of the deceased.—*Decision of February 4, 1889.*

When a person dies in a foreign country and there is no information tending to show that he is a resident thereof, and less that he took up his residence in the same with the intention of losing or abandoning his domicile in Spain, it must be presumed that his absence was temporary and that his domicile continued to be the place where his family was established, for the purposes of this article.—*Decision of August 2, 1866.*

When the last residence of the deceased is known, the judge of the same is competent to take cognizance of the testamentary proceedings, his having a business place in another district and that he paid a consumption tax in the latter and resided there temporarily being no obstacle thereto.—*Decision of December 3, 1881.*

[2] In the Roman law, a universal fideicommiss consisted in the appointment of an heir with directions *verbis precativis* that he should restore the inheritance to a third person mentioned, the heir being called *fiduciarius*, and the third person *fideicommissarius*. The singular fideicommiss was simply a trust legacy, differing from the common legacy in nothing but the form and the words employed.—*Bell's Dictionary and Digest of the Law of Scotland.*

claims of testamentary and hereditary creditors, during the pendency of the testamentary or intestate proceedings, jurisdiction is vested in the judge competent to take cognizance of the last-named proceedings.[1]

8. In voluntary bankruptcy proceedings of merchants and of non-merchants, the judge of competent jurisdiction shall be the one of the domicile of the bankrupt.

9. In bankruptcy proceedings instituted by creditors, that of any of the places where the judicial writs of execution are being enforced. Among the aforesaid courts shall be preferred that of the domicile of the debtor if he and a majority of the creditors request it. Otherwise the court which decreed the adjudication of insolvency shall be preferred.

10. In proceedings relating to the challenge of arbitrators and friendly compromisers when they do not agree to the challenges, the judge of the place where the party challenged resides shall be competent.

11. In appeals taken against arbitrators, in the cases where they lie according to law, the audiencia of the district within which the town is situated in which the action has been heard, shall be of competent jurisdiction.

12. In cautionary attachment proceedings the judge of the judicial district in which the property to be attached is situated shall be competent, and for precautionary purposes in cases of urgency the municipal judge of the town in which they are situate.[2]

13. In actions of unlawful detainer or of redemption, the competent judge shall be the one of the place where the thing in litigation is situate, or the one of the domicile of the defendant, at the election of the plaintiff.

14. In summary proceedings to acquire possession of property[3] the

[1] When the claims deduced relate to obligations inherent to an intestate, involving the expenses incurred during the last illness, burial, and funeral, the court taking cognizance of the intestate proceedings shall also be competent to pass on and determine said claims.—*Decision of December 22, 1886.*

[2] With the exception of the cases referred to in article 1409 of the Law of Civil Procedure, when the cautionary attachment is requested after the institution of the principal action, or as an issue of the same, and of cases of implied or express submission of the parties, to which are applicable articles 55 and 56, respectively, the competency to take cognizance of said attachments must be determined by rule 12 of article 63 of the said law. Consequently, if a cautionary attachment is requested before the institution of the principal action, and the submission has not been alleged, the judge of the district in which the property is situated shall be competent to take cognizance of the proceedings, no matter what judge may be competent to take cognizance of the action which may subsequently be instituted.—*Decision of March 15, 1887.*

[3] *Interdicto de adquirir.* These proceedings lie when no one possesses the property, whose possession is desired, as an owner or usufructuary, because the person possessing the same can not be deprived of his possession without having his right heard and determined in court; and it is furthermore necessary that a copy of the will giving him a right thereto be presented, or of the designation of heirship by virtue of which he claims the same.—*Alcubilla, Diccionario de la Administración española.*

competent judge shall be the one of the place where the property is situate, or where the testamentary or intestate proceedings are instituted, or that of the last domicile of the deceased.

15. In summary proceedings to retain or recover possession of property,[1] to prevent the construction of a new work, or to secure the demolition or strengthening of a work, building, or tree about to collapse or fall, and in proceedings to settle boundaries, the judge of competent jurisdiction shall be the one of the place in which the thing which is the object of the summary proceedings or settlement of boundaries is situated.

16. In proceedings for adoption or arrogation the judge of competent jurisdiction shall be the one of the domicile of the adopter or arrogator.[2]

17. In the selection and appointment of guardians of persons and property, and excuses from accepting them, jurisdiction is vested in the judge of the domicile of the father or mother whose death gives rise to the appointment, and, in their default, that of the minor or incapacitated person, or that of any of the places where they may have real estate.[3]

18. In the appointment and selection of guardians *ad litem*, jurisdiction is vested in the judge of the place where the minors or incapacitated persons have their domicile or that of the place where the action is to be instituted.

19. In actions based upon the conduct of the guardianship of person or property, in the resignations therefrom after having begun to perform the duties thereof, and in actions to remove suspicious guardians, the judge of competent jurisdiction shall be that of the place where the principal part of the guardianship has been administered, or that of the domicile of the minor.

20. In proceedings for the custody of persons, jurisdiction shall be vested in the judge taking cognizance of the main action or cause which gave rise to said proceedings.

When there is no prior action pending, the competent judge shall be the one of the domicile of the person sought to be placed in custody.

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[1] *Interdictos de retener y recobrar* were different according to the law of 1855; but the present law has abolished the difference of procedure between the same. It lies when the person in possession of the thing has been disturbed therein by acts which show the intention of disturbing him or depriving him of possession, or when he has already been deprived thereof.—*Alcubilla, Diccionario de la Administración española.*

[2] The Civil Code has abolished the difference between adoption and arrogation observed in the Roman law and which was retained in the Spanish laws, as may be seen in Law 7, Title VII, Partida Fourth, and in article 1830 of this law.

[3] The Civil Code, besides having abolished the difference between guardianship of person and guardianship of property (*tutela y curaduría*), has made the provisions of rules 17 to 19 inapplicable by reason of having assigned the appointment and selection, as well as the removal and excuses of the same, to the family council. (Articles 239, 240, and 249.)

When special circumstances so require, the municipal judge of the place where the person sought to be placed in custody is found, may order such custody temporarily, and shall forward a statement of his action to the competent judge of first instance, subjecting the person in custody to the orders of said court.[1]

21. In proceedings for maintenance, when collaterally requested in an action, or in proceedings for the custody of a person, the judge of competent jurisdiction shall be that of the place of residence of the person of whom said maintenance is requested.[2]

22. In proceedings for the reduction to public instruments of wills, codicils or bequests made verbally, or documents executed without the intervention of a notary public, and in proceedings instituted for the opening of sealed wills or codicils, the judge of competent jurisdiction shall be that of the place where said documents may have been executed.

23. In authorizations for the sale of property of minors or incapacitated persons, the competent judge shall be that of the place where the property may be situated, or that of the domicile of the persons to whom it belongs.[3]

24. In proceedings for the administration of the property of an absentee, whose whereabouts is unknown, jurisdiction is vested in the judge of the last place of residence of said absentee within Spanish territory.

25. In proceedings to dispense with the law, and in proceedings for authority to appear in an action, when required by law, the judge of competent jurisdiction shall be the one of the domicile of the person requesting it.

26. In proceedings to perpetuate testimony the judge of competent jurisdiction shall be that of the place where the facts occurred, or the one where the witnesses who are to testify may be, even accidentally.

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[1] If the person has been placed in charge of his mother, the judge of the domicile of the latter shall be competent to determine the custody and support of the minor.—*Decision of July 2, 1878.*

[2](*a*) Not this rule, but the first one of article 62 is applicable, to a suit for the reduction or release from the payment of maintenance, paid by virtue of a judgment.—*Decision of February 28, 1878.*

(*b*) This rule does not make any distinction between a voluntary and contentious proceeding, nor between temporary and definite support.—*Decision of October 29, 1879.*

[3]This rule is modified by article 164 of the Civil Code, according to which the authorization to the father, or to the mother, in a proper case, to alienate or encumber the property of the child for proper causes of profit or necessity, and whose usufruct or management they enjoy, must be granted by the judge of the domicile. The authorization to the guardian to alienate or encumber property which constitutes the capital of the minors or incapacitated persons, etc., must at the present time be granted by the family council. (*Civil Code, articles 269, 270, and 271.*)

When these proceedings relate to the actual condition of real estate, the judge of competent jurisdiction shall be the one of the place where it may be situate.

27. In proceedings for surveying, for partition of *foros*,[1] and for possession of property, by an act of voluntary jurisdiction, the competent judge shall be that of the place where the greater portion of the estate is situated.

ART. 64. The domicile of married women not legally separated from their husbands is that of their husbands.[2]

That of the children under the parental authority is the residence of their parents.

That of minors or incapacitated persons subject to guardianship is the residence of their guardians.[3]

ART. 65. The legal domicile of merchants, in all that relates to commercial acts and contracts and the consequences thereof, shall be the town where their principal place of business is located.

Persons who have commercial establishments situated in different judicial districts may be made defendants in personal actions in the place where their principal establishment is located or where the obligation was incurred, at the election of the plaintiff.

ART. 66. The domicile of civil and commercial corporations shall be the town designated as such in the articles of incorporation or in their by-laws.[4]

Should this circumstance not be apparent the provisions applicable to merchants shall be observed.

Joint-stock companies are excepted from the provisions contained in the foregoing articles in all that relates to litigation between the members, with regard to whom the general provisions of this law shall be observed.

ART. 67. The legal domicile of employees shall be the town where they discharge the duties of their employment. When the character of their employment is such as to require them to be traveling continuously from place to place, their domicile shall be considered the place where they most frequently reside.

ART. 68. The legal domicile of soldiers in active service shall be that of the town in which the corps to which they belong may be at the time when service of summons is made.

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[1] Emphyteutic rents.—*Schm., C. L., 309.*

[2] The application of this rule is not affected by the fact that the wife resides in a town different from that of the residence of the husband, nor that she is registered in said town.—*Decision of October 30, 1878.*

[3] See notes to rules 17 and 19 of article 63.

[4] The fact of the establishment of a branch in a place not the domicile of the company, according to the articles of incorporation, does not affect said domicile.—*Decision of June 4, 1883.*

ART. 69. In cases in which the designation of the domicile is necessary in order to determine jurisdiction, if the defendant has no domicile in the islands of Cuba or Porto Rico, jurisdiction is vested in the judge where said defendant resides.

Those who have no fixed domicile or residence may be sued in the place where they may be, or in their last place of residence, at the election of the plaintiff.

ART. 70. The foregoing jurisdictional provisions shall be applicable to foreigners who may seek the aid of the Spanish courts in acts of voluntary jurisdiction, or who appear in an action as plaintiffs or defendants against Spaniards or against other foreigners, when the Spanish jurisdiction is authorized according to the laws of the Kingdom or by treaties with other powers.

ART. 71. The rules established in the foregoing articles shall be understood without prejudice to the provisions of law in special cases.

SECTION III.—*Questions of competency.*

ART. 72. Questions of competency may be raised by inhibition or declinature.

The inhibition shall be presented to the judge or court considered competent, requesting that a writ be issued forbidding the court not considered as having jurisdiction to proceed in the cause and ordering it to transmit the record.

The declinature shall be submitted to the judge or court considered incompetent, requesting that he or it cease to act in the matter and to transmit the record to the judge or court considered competent.[1]

ART. 73. The inhibition and the declinature may be interposed by the parties cited to appear before the incompetent judge, or by those who may be the legitimate parties in the action brought.[2]

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[1] It is not sufficient to allege incompetency, but it is necessary to formally raise the question, and if this is not done the benefit of number 6 of article 1693 of the law in force can not be taken advantage of in order to base thereon an appeal for annullment of judgment.—*Decision of October 26, 1861.*

When the differences between two judges do not involve any question of jurisdiction, but only the interpretation of a legal text, it is not a question of competency, and the parties may make use of their right before whom they wish and in the proper manner.—*Decision of November 14, 1884.*

In order that there may be a question of competency it is necessary that two judges allege that they desire to take cognizance of the same matter, believing themselves competent to do so; and this is not the case when each of the judges agrees that the cognizance of the case brought before him pertains to his colleague and they dispute only the validity of the attachment decreed by one of them with full powers in the suit which he is hearing.—*Decision of July 12, 1887.*

[2] In civil matters questions of competency may be raised only by persons who appear as litigants, either having brought the actions or being defendants therein.—*Decision of August 30, 1866.*

ART. 74. In no case shall questions of competency in civil matters be raised by the court on its own motion; but the judge who considers himself incompetent in the matter may abstain from taking cognizance thereof, after consulting with the department of public prosecution, admonishing the parties to submit their questions to the proper court.

This ruling of the court may be appealed from for review and for a stay of proceedings.

ART. 75. The litigant who has submitted himself expressly or impliedly to the court or judge before whom the matter is brought, can not interpose an inhibition or a declinature.

ART. 76. Neither can questions of competency be raised in judicial matters which have been closed by a final ruling or judgment.[1]

ART. 77. He who interposes one of the pleas mentioned in article 72 can not abandon it and seek the other plea, nor take advantage of both simultaneously or successively, but must submit to the determination of the plea he may have preferred.

ART. 78. He who raises a question of competency by either of the pleas above mentioned, shall state in his plea that he has not interposed the other one.

If the contrary shall appear, he shall be taxed the costs of the issue, even though the question of competency be decided in his favor.[2]

ART. 79. The practice prescribed for dilatory exceptions shall be followed in declinatures as prescribed in article 536.

The practice prescribed in the following articles shall be applicable to inhibitions.

ART. 80. The following may hear and determine questions of competency raised by the parties:

1. Municipal courts.
2. Courts of first instance.
3. Audiencias.

ART. 81. No judge or court can raise the question of the competency of his next hierarchical superior, but he may state, at the instance of the party and after hearing the department of public prosecution,

[1] Although, according to this article, questions of competency can not be raised in judicial matters which have been closed by a final ruling or judgment, when the municipal judge who rendered the same received the writ of inhibition after doing so, and the defendant had requested it on the same day on which he was cited to appear, this article is not applicable, because the delay in the matter on account of said writ can not prejudice him.—*Decision of January 10, 1883.*

After a cautionary attachment has been ratified without the debtor having made use of his right, no question of competency can be raised with regard to the attachment, it being a closed judicial matter.—*Decision of March 3, 1885.*

[2] When a declinature has been unsuccessfully interposed in an issue of poverty, an inhibition can not afterwards be interposed in the main action, and the person doing so must be taxed the costs in accordance with the provisions of this article.—*Decision of December 31, 1891.*

his reasons for believing that the cognizance of the matter pertains to him.

The superior court or judge shall deliver the statement and data to the representative of the department of public prosecution, for a report thereon, and without further proceedings shall decide within three days what he or it may consider proper, communicating the decision to the lower court for its guidance.

ART. 82. When any judge or court is taking cognizance of a matter, jurisdiction over which belongs to his or its immediate hierarchical superior or to the supreme court, the latter shall confine themselves to order the former, also at the instance of a party, and after hearing the department of public prosecution, to abstain from proceeding in the matter and to forward the record to the same.

ART. 83. In the cases of the two foregoing articles, the judges and courts shall always comply with the order of their next hierarchical superior, without further remedy, when the latter is the supreme court. From the decisions of the audiencias, but without prejudice to their fulfillment, the parties who may consider themselves injured and the department of public prosecution, may appeal within eight days to the third chamber of the supreme court. This chamber shall call for a detailed report, or for the record of the proceedings, from the audiencia which may have rendered the decision, and after hearing the department of public prosecution shall decide what it may consider proper.

A similar appeal may be taken to the civil chamber of the proper audiencia by the parties who consider themselves injured by the resolutions of judges of first instance in their relations with municipal judges.

ART. 84. Pleas for inhibition shall always be interposed in writing, subscribed by an attorney.

The only exceptions from this rule are those relating to oral actions, when the interest involved therein does not exceed 1,000 pesetas, which exceptions may be interposed and heard verbally before the municipal judge, or in writing, without the necessity of the subscription of an attorney; but the municipal *fiscal* must be heard in writing.[1]

ART. 85. The judge or court before whom an inhibition is interposed shall hear the representative of the department of public prosecution, unless the latter should have advanced said plea himself, as a party to the action. The department of public prosecution shall conclude the hearing within three days.

ART. 86. After the department of public prosecution has been heard, the court shall decree the issue of a writ of inhibition, or shall declare that the plea was not well taken.

[1]The absence of the signature of an attorney to an inhibitory plea constitutes a breach of form which prevents the decision of the competency.—*Decision of July 5, 1880.*

ART. 87. The decree of a municipal judge or judge of first instance declaring that the inhibitory plea was not well taken, may be appealed from for review and for a stay of proceedings.

Only an appeal for annulment of judgment by reason of breach of form lies, in a proper case, from similar decisions of audiencias, whether rendered on appeal or in first instance.

ART. 88. To the writ of inhibition there shall be attached a certified copy of the instrument in which it was requested, of the statements of the representative of the department of public prosecution, of the decision rendered thereon, and anything else which the judge or court may deem necessary to sustain his or its jurisdiction.

ART. 89. As soon as the judge or court inhibited receives the writ of inhibition, he or it shall suspend the proceedings and shall hear the party or parties who may have appeared in the action, and if said parties should not agree to the inhibition, said judge or court shall also hear the representative of the department of public prosecution.

ART. 90. The hearing of the parties referred to in the foregoing article shall only be had during three days, after which, if the record be not returned, it shall be officially recovered by or without a writ, and after the representative of the department of public prosecution has been heard, in a proper case, the judge or court shall decide whether or not he shall be inhibited from proceeding in the matter.[1]

ART. 91. The appeals mentioned in article 87 lie against the rulings of courts or judges inhibiting themselves from taking cognizance of a question.

ART. 92. After the ruling by which a court or judge shall have inhibited himself or itself from taking cognizance of a matter has been agreed to or made final, the proceedings shall be forwarded to the judge or court which interposed the inhibition, with a citation of the parties to appear before him or it within fifteen days and assert their rights.

ART. 93. If the inhibition should be refused, the decision shall be communicated to the judge or court which interposed it, with certified copies of the instruments filed by the parties in interest and by the representative of the department of public prosecution, in a proper case, and anything else which may be considered advisable.

ART 94. In the communication which the judge or court sought to be inhibited, addresses in the case of the foregoing article, he shall demand an answer in order to continue the proceedings, if allowed to do so, or to forward the record of the same to the proper court for the decision of competency.

ART. 95. After the communication referred to in the foregoing article has been received, the judge or court which interposed the

[1] The decision must declare whether the inhibition is proper or not, and the judge inhibited can not declare that the competent court is a third one which has not taken part in the question.—*Decision of December 28, 1877.*

inhibition shall, within three days, make an order without further proceedings insisting on or abandoning the inhibition.

ART. 96. The appeals mentioned in article 87 lie against a decision desisting from an inhibition.

ART. 97. After the decision by which the judge or court interposing the inhibition desists therefrom has been consented to or becomes final, it shall be communicated in writing to the one sought to be inhibited, together with the proceedings taken, in order that it may be attached to the record thereof and the proceedings continued.

ART. 98. If the judge or court issuing the writ of inhibition should insist on the inhibition, he or it shall communicate the same to the judge sought to be inhibited, and both shall forward by first mail their original proceedings to the superior court which is to determine the competency.

ART. 99. Questions of competency shall be decided—

1. Those arising between municipal judges of their respective judicial districts, by the judges of first instance.

2. Those arising between judges of first instance and municipal judges who exercise their jurisdiction within the respective territory, with the exception of those comprised in the foregoing number, by the civil chambers of the audiencias.

3. Those arising between judges of first instance or other judges or special courts existing in the respective territory, whether among themselves or with another of a different jurisdiction, by the civil chambers of the audiencias.

4. Those arising between the said judges or special courts, among themselves or with others of a different jurisdiction, when any of the contending parties holds an office within the territory of the audiencia of Puerto Príncipe or that of Porto Rico, by the civil chamber of the audiencia of Habana.

5. All other cases, by the third chamber of the supreme court.

ART. 100. The transmission of the records of proceedings shall always be made with a citation to the parties to appear within ten days, if the records are to be forwarded to the court of first instance, within fifteen days, if to be forwarded to the audencia, and within sixty, if they are to be transmitted to the supreme court.

When the transmission of the record of the proceedings is to be made to the supreme court, a certified copy thereof shall be forwarded.

ART. 101. After the record has been received by the court, it shall be delivered for a period of three days to the *promotor fiscal*, and in view of his report the judge shall render his decision within a similar period, if the parties should not have appeared.

If said parties have appeared, they shall be cited to be present within a period not to exceed six days, and shall in the meantime have access to the records in the clerk's office.

Should they appear on the day fixed, they or their attorneys shall

be heard, and within three days thereafter a decision shall be rendered deciding the question of competency.

Against this decision there shall be no remedy whatsoever, except an appeal for annullment of judgment for breach of form in actions of unlawful detainer.

ART. 102. As soon as the audiencia or the supreme court receives the record of proceedings, it shall be delivered to the relator[1] in order that he may prepare an abstract thereof as soon as possible.

ART. 103. After the abstract has been prepared, it shall be delivered, together with the record, to the public prosecutor, in order that he may make his written report thereon within the period of four days.

ART. 104. If the parties, or any of them, have appeared, the record shall be delivered to each of them for their examination for three days, which period can not be extended, after which they shall be officially recovered and the day for the hearing shall be fixed.

This hearing must take place, with or without attorneys, within eight days after the return of the records.

ART. 105. From the rulings of audiencias deciding questions of competency the only remedy shall be an appeal for annullment of judgment by reason of breach of form, which shall be allowed after the action has been definitely settled.

Against the rulings of the supreme court there shall be no further remedy.

ART. 107. The decisions of the supreme court on questions of competency shall be published within the ten days following the date of their rendition in the *Gaceta de Madrid* and in due time in the *Colección Legislativa.*

ART. 108. The supreme court may tax the costs of the inhibition against the judge or court and against the party willfully raising or opposing it, determining, in a proper case, the proportion in which they shall pay the same, or whether they are to be paid by the parties exclusively.

When the person who has raised the question of competency is included within the provisions of the second paragraph of article 78, all the costs shall be taxed against him.

The audiencias and judges of first instance may make the same declarations when they decide questions of competency.

Should they not make any special taxation of costs, those arising in the question of competency shall be considered as defrayed by the Government (*de oficio*).[2]

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[1] The person appointed in each superior court to make the briefs of the causes.—*Escriche, Diccionario de Legislación y Jurisprudencia.*

[2] In accordance with the provisions of this law, the taxation of costs against the litigant and the municipal judge is proper when they willfully and improperly raise and sustain an inhibition, giving the law an interpretation against its spirit and that of the constant jurisprudence of the supreme court, to which they should have conformed.—*Decision of July 3, 1884.*

ART. 109. The court which may have decided the question of competency shall forward the cause and the proceedings had before it, for decision to the judge or court which has been declared competent, with a certificate of the judgment rendered, and shall inform the one considered incompetent thereof.

Said court shall also see that its decisions relating to costs be enforced, and shall, after the taxation thereof, issue the proper orders for the purpose.

ART. 110. When the question of competency between two or more judges or courts should be negative, by reason of the refusal of all of them to take cognizance of a cause, the common superior court or the supreme court, in a proper case, shall decide the question of competency, the same procedure that is prescribed for other questions of competency being pursued.

ART. 111. The questions of competency or of powers arising between two chambers of a court, shall be decided by the chamber of administration of the same, the public prosecutor being heard in writing, without any other proceeding and without further remedy, unless it be an appeal for annulment of judgment, when proper, from the definite judgment of the cause.

ART. 112. Questions of jurisdiction interposed by secular judges or courts, against ecclesiastical judges or courts, shall be heard and decided in accordance with the rules established for appeals for review to civil courts from decisions of ecclesiastical courts.[1]

ART. 113. When ecclesiastical judges or courts consider that jurisdiction over a matter pending before secular courts or judges belongs to them, they may issue a writ of inhibition, and should said courts not inhibit themselves they may complain to the immediate superior of the said civil courts or judges, who, after hearing the representative of the department of public prosecution thereupon, shall decide what he may consider proper.

Against this decision there shall be no remedy whatsoever.

ART. 114. The inhibitions and declinatures shall stay all proceedings until the question of competency is decided, except in the case referred to in the foregoing article.

During the stay of proceedings, the judge or court inhibited may, at the instance of a legitimate party, take any steps which may be absolutely necessary in his or its judgment which, if delayed, would cause irreparable injury.

ART. 115. All proceedings had before the decision of the questions

[1] *Recurso de fuerza en conocer:* The complaint made by a person who considers himself unjustly treated by an ecclesiastical judge to a secular judge, imploring his protection, and requesting that the former be ordered to repair the injustice done the appellant.—*Novísima Recopilación, book 2, title 2, law 1.*

of competency, shall be valid without requiring ratification by the judge or court which is declared competent.[1]

SECTION IV.—*Remedy of complaint against administrative authorities.*

ART. 116. The governors-general of the islands of Cuba and Porto Rico are the only authorities which may raise questions of positive or negative competencies in the name of the administration against superior or inferior courts exceeding their jurisdiction, in cases where they invade the powers pertaining to administrative officials.[2]

ART. 117. Positive or negative questions of competency which the administration may raise against judges or courts, shall be heard and determined in the manner prescribed by the laws and regulations relating thereto.

ART. 118. Judges or courts can not raise questions of competency against the officials of the administrative service.

Nevertheless, they may maintain the jurisdiction and powers vested in them by the constitution and laws, and they may complain against the invasions of said authorities, by means of appeals to the Government.

ART. 119. Remedies of complaint may be sought—

1. At the instance of the party injured.
2. At the instance of the department of public prosecution.
3. Officially (*de oficio*).

ART. 120. The chambers of administration of the audiencias and that of the supreme court only may seek the remedy of complaint against the invasions of the administration in judicial powers.

ART. 121. Municipal courts and those of first instance, when their powers are invaded by the administrative authorities, shall inform the chamber of administration of the audiencia thereof, in order that the latter may seek the remedy of complaint, if it considers it proper.

For this purpose the municipal courts shall forward to those of first instance of their judicial district the record of the proceedings containing the facts relative to the abuse of power committed by the agent of the administrative service, and the latter shall forward the same with their report to the proper audiencia.

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[1](*a*) Judges of ordinary as well as of the privileged jurisdiction must bear in mind the jurisprudence established by the supreme court in decisions of questions of competency and conform thereto and not act in contravention of jurisprudence already established for cases of the same character.—*Decision of May 24, 1862.*

(*b*) Decisions of the supreme court, besides deciding the concrete questions to which they refer, must serve as rules to judges in similar cases, and the latter shall not be permitted to insist on their own particular rulings in order to raise or prosecute questions of competency against the express and decisive declarations of said court.—*Decision of January 30, 1861.*

[2]This precept was subsequently confirmed by the provincial law of 1882, article 27, and by the Royal decree of November 28, 1883.

When the proceedings have been initiated in the courts of first instance, they shall be forwarded directly to the audiencia.

If they should have been instituted in the chambers of justice of the audiencias or of the supreme court, they shall be referred to the respective chamber of administration after their conclusion.

ART. 122. The chambers of administration of the audiencias, after receiving the proceedings referred to in the foregoing article, or in view of the proceedings commenced or prosecuted before them, and that of the supreme court, in a proper case, shall forward the same to the department of public prosecution for a report thereon with precedence over everything else.

ART. 123. In view of said report, and after completing the proceedings, if necessary, the chambers of administration of the audiencias, or that of the supreme court, in a proper case, shall decide whether the remedy of complaint should or should not be sought.

If they decide that said remedy should be sought, they shall do so in a statement containing the reasons, unless they should accept the report of the department of public prosecution without any other addition.

ART. 124. The Government shall decide these disputes in the manner prescribed in the laws and regulations.[1]

TITLE III.

APPLICATIONS TO CIVIL COURTS FOR MODIFICATION OF ACTIONS OF ECCLESIASTICAL COURTS.[2]

ART. 125. An application for the modification of the action of an ecclesiastical court may be made when an ecclesiastical judge or court hears, or attempts to hear, a secular cause not subject to ecclesiastical jurisdiction, or attempts to execute any judgment, by attachment or sale of property, pronounced in any matter within his or its jurisdiction, without seeking the aid of the ordinary jurisdiction.

ART. 126. The audiencias of Cuba and Porto Rico shall pass on applications for the modification of the action of the Nunciature or of the higher ecclesiastical tribunals of the court; and the audiencias on those relating to the action of other ecclesiastical judges or courts of their respective districts.

Against the decisions rendered thereon by the supreme court, or by the audiencias, there shall be no further remedy.

ART. 127. The following persons may apply for the modification of the action of ecclesiastical courts:

1. Those who consider themselves injured by the usurpation of powers made by an ecclesiastical judge or court.

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[1] See note to article 116.

The subsequent proceedings are indicated in the organic law of the judiciary.

[2] See note to article 112.

2. The public prosecutors of the audiencias at their own instance or upon the request of that of the supreme court.

ART. 128. The municipal public prosecutors (*fiscales*), deputy public prosecutors (*promotores fiscales*), and the judges and courts of the ordinary jurisdiction can not directly make application for the modification of the action of an ecclesiastical tribunal.

When the above-mentioned officials should learn that some ecclesiastical judicial authority has interfered in any matter foreign to its jurisdiction, they shall apply to the public prosecutors of the audiencias or to the one of the supreme court, according to their respective powers, furnishing the data and information they may have in order that they may make the application, should they consider it proper.

ART. 129. Persons who consider themselves injured by an ecclesiastical judge or court, and who desire to make an application for the modification of his or its action, shall do so in the manner prescribed by this law.

ART. 130. The department of public prosecution shall make the application directly and without any preparation whatsoever.

ART. 131. The person injured shall prepare the application before the ecclesiastical judge or tribunal, requesting, in a signed petition, that said ecclesiastical court desist in the hearing of the matter and forward the record or the proceedings already had to the competent judge, stating that if this be not done, royal protection against his action will be sought.

ART. 132. When the ecclesiastical judge or court should deny the petition made in accordance with the foregoing article, the person injured may demand a certified copy of the ruling of denial, and after it has been obtained the application shall be considered as prepared.

ART. 133. If the ecclesiastical judge or court should refuse to issue said certificate, or not issue an order desisting from hearing the matter, the person injured may file a complaint in the audiencia within the territory of which the former exercises his or its jurisdiction, in accordance with the provisions of this law.

ART. 134. The court before which the complaint is made, if competent to pass upon the application, shall order the ecclesiastical judge or court to deliver the certificate to the appellant within three days after the receipt of the royal order addressed to him for that purpose.

ART. 135. If the ecclesiastical judge or court should not comply with the order mentioned in the foregoing article, a second royal order shall be sent to the same, threatening said ecclesiastical judge or court with the penalty prescribed for this case in the Penal Code.[1]

ART. 136. If the second royal order should not be obeyed, the court taking cognizance of the application shall order the judge of first

[1] See article 388 of the Penal Code for Cuba and Porto Rico.

ART. 272. The writ of citation shall contain—

1. The name of the judge or court issuing the order, the date of the latter, and the matter upon which it is based.

2. The name and surnames of the person upon whom service is to be made.

3. The purpose of the citation and the name of the party who requested it.

4. The place where and the day and hour when the person cited is to appear.

5. The admonition that if he fails to appear he shall suffer the penalty imposed by law; closing with the date and the signature of the clerk.

If the appearance is obligatory this admonition shall be made, and if a second citation becomes necessary by reason of the failure of the party cited to appear, he shall be warned in said citation that if he fails to appear, or if he does not show good cause for nonappearance, he shall be prosecuted for the offense of serious disobedience to the authorities.

ART. 273. The citation of the witnesses and experts, and other persons not parties to the action, when to be made officially, shall be made by a bailiff (*alguacil*).

For this purpose the clerk shall prepare duplicate writs, and the bailiff shall deliver one copy to the person cited, who shall sign his receipt on the other copy, which shall be attached to the record.

These citations may also be made by means of an official communication when the judge considers it advisable.

ART. 274. The writ of summons shall contain all the statements mentioned in numbers 1, 2, 3, and 5 of article 272, and shall contain in addition a statement of the period within which the person cited is to appear, and the superior or inferior court before whom said appearance shall be made.[1]

ART. 275. Requisitions shall be served by the delivery of a notice upon the person interested of the order in which it is made, in the form prescribed; the clerk shall make an entry in the proceeding stating that the requisition has been served as ordered.

ART. 276. No answer of the person interested shall be allowed nor stated in notifications, citations, and summonses, unless required in the order of the court.

In the case of requisitions the answer made by the person requested shall be allowed and succinctly entered in the proceeding.

ART. 277. If the citation or summons is to be made by means of letters rogatory or letters mandatory, the proper writ shall be attached thereto.

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[1] Court clerks who do not comply with the prescriptions of this article shall be disciplined, incurring a fine of from 25 to 50 pesetas.—*Decision of May 20, 1886.*

warded by the judge of first instance, in accordance with the provisions contained in the preceding articles, the application shall be considered as admitted by the mere fact that said record is before the court of competent jurisdiction.

ART. 146. In any case, after the records have been received by the audiencia, the application shall be heard and determined in the manner prescribed in this law for appeals upon incidental issues.

ART. 147. The representative of the department of public prosecution shall also be a party to the applications not made by the same, and he must in all cases attend the hearing thereof.

ART. 148. The court shall render a decision within eight days following the hearing, limiting itself to the following declarations:

1. That the application is not well taken, taxing the costs against the person making it and ordering that the record be returned to the ecclesiastical judge or court for the continuation of the proceedings according to law. In no case can the costs be taxed against the department of public prosecution.

2. That the ecclesiastical judge or court has wrongfully assumed jurisdiction in the matter, and ordering the same to vacate any impositions or punishments he or it may have imposed. In such case the costs may be taxed against the ecclesiastical judge or court, if he or it should, with well-known temerity, have assumed powers and jurisdiction which said ecclesiastical judge or tribunal did not have.

This order shall be communicated in writing to the ecclesiastical judge or court.

ART. 149. A report of every decision declaring that an ecclesiastical judge or court has wrongfully assumed jurisdiction shall be made to the government, a copy of said decision being also forwarded.

ART. 150. When it should be declared that an application is not well taken, the records of the proceedings shall be returned to the ecclesiastical judge or court, with the proper certificate, in order that he or it may proceed in the matter according to law.

ART. 151. After the return of the records of the proceedings, the costs shall be appraised and taxed. The audiencia shall issue the proper orders for their collection by judicial compulsion.

ART. 152. If it be declared that the ecclesiastical judge or court has wrongfully assumed jurisdiction, the records of the proceedings shall be forwarded to the judge of competent jurisdiction, and the parties who have appeared before the court shall be cited to appear before the competent judge, the ecclesiastical judge being given written notice thereof.

TITLE IV.

CONSOLIDATIONS.

SECTION I.—*Consolidation of actions.*

ART. 153. The plaintiff may consolidate in his complaint as many causes of action as he may have against the defendant, even though they proceed from different titles, provided that said actions are not incompatible with each other.

ART. 154. The simultaneous exercise of two or more causes of action in one and the same action shall be incompatible, and they can not, therefore, be consolidated, in the following cases:

1. When said causes of action mutually exclude or are antagonistic to each other, to such an extent that the selection of one prevents the exercise of the other or renders it invalid.

2. When the judge who is to take cognizance of the main action should be incompetent, by reason of the matter or amount in litigation, to take cognizance of the consolidated actions.

3. When, in accordance to law, the causes of action must be heard and decided in actions of a different character.

ART. 155. Causes of action which by reason of the amount litigated are subjects of oral actions, may be joined in actions of greater or of lesser import.[1]

In such cases the competency of the judge and the kind of declaratory[2] action to be brought shall be determined by the accumulated value of all that may be the object of the complaint.

ART. 156. Causes of action against several persons, or by several persons against one, arising from the same source of title or based upon the same cause of action, may be joined and brought in one action.[3]

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[1] *Mayor cuantía:* Greater import. These actions are such as involve interests valued at more than 3,000 pesetas, questions relating to political or honorary rights, those in which the interest involved can not be appraised or determined, personal exemptions and privileges, filiations, paternity, and other questions involving the civil status and condition of persons.

Menor cuantía: Lesser import. Actions involving interests of over 250 and not exceeding 3,000 pesetas.—*Alcubilla, Diccionario de la Administración española.*

[2] *Juicio declarativo:* That involving doubtful and controverted rights which must be judicially decided.—*Escriche, Diccionario razonado de legislación y jurisprudencia.*

[3] Article 156 is limited to permitting a consolidation when one person has several causes of action against another, and when several persons have a cause of action against one person, fixing the kind of causes of action which may be joined in either case, without determining the effects of the consolidation; and article 159 provides that all the causes of action must be heard in the same suit and decided by the same judgment. Therefore, there is no appeal for the violation of article 156 when taken

ART. 157. The consolidation of actions shall not be permitted after answer to the complaint has been made, but the plaintiff reserves the right to institute the proper independent actions.

ART. 158. If, before answer is made, the complaint be extended in order to consolidate new causes of action in addition to those already included in the complaint, the period of time to answer shall be counted from the time of the filing of the extension of the complaint.

ART. 159. When the consolidation of causes of action can take place and is made at the proper time by the plaintiff, it shall produce the effect of their being heard in one and the same action and being decided in one and the same judgment.

SECTION II.—*Consolidation of records of proceedings.*

ART. 160. Consolidation of records of proceedings may only be ordered at the instance of a proper party to the action.

Proper parties for this purpose shall be those who may have appeared as litigants in any of the causes, the consolidation of which is desired.[1]

ART. 161. The consolidation may be ordered in the following cases:

1. When the judgment to be rendered in one of the actions, the consolidation of which is requested, would raise the exception of *res judicata* in the other.

2. When an action is pending before the competent court on the same matter which is the object of that instituted subsequently.

3. When bankruptcy or insolvency proceedings are pending and the property of the insolvent or bankrupt is the subject of the action instituted.[2]

4. When testamentary or intestate proceedings are pending and the property of the estate is the subject of the action instituted and

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under the wrongful assumption that it grants to one colitigant the right to maintain an action which another may have abandoned after having brought it.—*Decision of May 18, 1891.*

The causes of action can not be consolidated when their origin and the persons against whom they are directed are different.—*Decision of April 14, 1886.*

The consolidation can not take place when the actions which the plaintiff exercises arise from different private contracts entered into by him with different fire insurance companies.—*Decision of April 20, 1887.*

[1] Records of proceedings can not be consolidated when they relate to acts which are not connected with each other.—*Decision of May 9, 1864.*

The decree ordering the consolidation of appeals of which a court of justice is taking cognizance is not final.—*Decision of March 29, 1889.*

The decision declaring the consolidation of two appeals not proper, is not final for the purposes of appeals for annullment of judgment.—*Decision of February 3, 1888.*

[2] The law does not make any distinction between voluntary and involuntary bankruptcy for the purposes of the consolidation of proceedings pending, which involve the property of the bankrupt.—*Decision of March 12, 1869.*

said action is declared to be subject to consolidation with said proceedings.[1]

5. When the unity of the action would be destroyed if the actions should be prosecuted separately.

ART. 162. The unity of the action is understood as destroyed, for the purposes of the last paragraph of the foregoing article—

1. When there is identity of persons, things, and causes of action between two actions.

2. When there is identity of persons and things, even though the causes of action be different.

3. When there is identity of persons and causes of action, even though the things be different.

4. When the actions are based upon the same cause, even though they be instituted against many persons, thereby causing diversity of persons.

5. Then the actions are based upon the same cause, even though persons and things be different.

6. When there is identity of causes of action and of things, even though the persons should be different.[2]

ART. 163. The consolidation may be requested at any stage of the action before the citation for final judgment.

ART. 164. Ordinary actions, executory actions,[3] summary proceedings relating to possession (*interdictos*), and in general all actions and proceedings of the same kind may be consolidated, provided that any of the causes mentioned in article 161 is attendant.

ART. 165. Neither records of proceedings had in different instances nor ordinary proceedings ready for judgment can be consolidated.

ART. 166. Executory actions can neither be consolidated with each

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[1]The law requires, in order to permit the consolidation, that the action be brought against the property involved in the testamentary proceedings and that it be of those which can be consolidated; and if according to this rule, the action against the testamentary property may be consolidated to said proceedings, such is not the case when said action does not affect property which does not belong to the estate, as is the case of property sold after the period agreed upon has elapsed.—*Decision of January 3, 1872.*

A personal action against a debtor can not be joined to the testamentary proceedings of his deceased wife.—*Decision of January 3, 1872.*

[2]The unity and identity of a thing in litigation are indispensable, among other requisites, for a consolidation under the same order of procedure; but it is not a doctrine of jurisprudence that the consolidation of actions is always proper whenever there is said unity and identity.—*Decisions of May 3, 1871, and January 25, 1875.*

The consolidation can not take place when the actions are terminated.—*Decision of May 12, 1871.*

[3]*Juicio ejecutivo:* An action the purpose of which is to enforce what is already determined or which appears from a title which has the same force of law as a judicial decision.—*Escriche, Diccionario de Legislación y Jurisprudencia.*

other nor with proceedings for the settlement of estates[1] when only the property mortgaged is the object thereof, excepting the case mentioned in articles 147 or 141 of the mortgage law respectively in force in Cuba and Porto Rico.

ART. 167. A final order of public sale is not an obstacle to the consolidation of executory actions. For this purpose such actions shall not be considered as closed until the execution creditor has been paid, or until the insolvency of the execution debtor is declared.[2]

ART. 168. If the same judge is taking cognizance of the actions sought to be consolidated and the records thereof are kept by the same clerk, the judge shall order that the clerk make a statement of all of said records.

If said records are kept by different clerks, the judge shall order that said clerks include the records in one and the same statement.

ART. 169. For the purpose of making the statement referred to in the foregoing article, the parties shall be cited to appear at a fixed day and hour, within eight days following the order.

ART. 170. After the statement is made, and after hearing the counsel of the parties thereupon, if they should have appeared, the judge shall, within the two days following, render the decision he may consider proper. This decision may be appealed from for review and for a stay of proceedings.

ART. 171. If the actions are prosecuted before different courts, the consolidation shall be requested before the judge competent to take cognizance of all of them.

This competency shall be vested in the judge or court before whom the oldest action is pending, with which the latter actions shall be consolidated.

From this rule are excepted testamentary, intestate, general assignment, and bankruptcy proceedings, with which all other records of proceedings shall be consolidated when proper.[3]

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[1] *Juicio universal ó general:* The proceedings in which all the actions and rights which all creditors have against the property of another are heard and determined, such as bankruptcy, testamentary, and intestate proceedings.—*Escriche, Diccionario de Legislación y Jurisprudencia.*

[2] The provisions contained in this article shall not be an obstacle to the consolidation of the records of executory actions when proper if a final order of public sale has been made, and the proceedings shall not be considered closed until the execution creditor has been paid in full or the execution debtor has been declared insolvent.—*Decision of May 10, 1887.*

[3] The general provisions of this law relating to the consolidation of records are applicable to the consolidation of proceedings for the settlement of estates. If there should arise a question between testamentary and bankruptcy proceedings, the judge of the proceeding which has been pending longest shall take cognizance of both.—*Decision of April 17, 1889.*

ART. 172. The written request for the consolidation shall be accompanied by as many copies thereof as there may be parties to the action in which the request is made, to whom said copies shall be delivered, in order that within three days thereafter they may object to said request, if they consider it advisable.

ART. 173. After the expiration of the period above mentioned the judge shall, without further proceedings, render a decision allowing or denying the consolidation, whether written objections thereto have been made or not.

There shall be no remedy whatsoever against the decision allowing the consolidation. An appeal for review only shall lie against the decision denying the consolidation.

ART. 174. When the judge considers the consolidation proper, he shall, in the same decision, order a communication addressed to the one hearing the causes, requesting the records. To this communication there shall be attached a certified copy of such data as may be considered by the judge as sufficient to furnish information of the reasons on which the request for consolidation is based.

ART. 175. When the requisition and certificate have been received by the other judge, within a period of three days, which can not be extended, a hearing before him shall be had of all matters which have arisen in the action.

ART. 176. Upon the expiration of said period, the records shall be officially recovered, if necessary, and the judge shall render a decision granting or denying the consolidation.

The decision granting the consolidation may be appealed from for review only, but against the decision denying the consolidation there shall be no remedy whatsoever.[1]

ART. 177. If the consolidation has been granted, the record shall be forwarded to the judge who may have requested it, and the parties shall be cited to appear within fifteen days and assert their rights.

ART. 178. If the consolidation should be denied, the judge upon whom requisition has been made shall communicate said denial without delay to the judge requesting the consolidation, attaching to his communication a certificate of the data which he may consider necessary to justify his decision, with a request for an answer, in order to continue proceeding in the action, if permitted to do so, or to forward the record to the person who is to decide the question.

ART. 179. The judge who may have requested the consolidation, as soon as he receives said communication, shall cease hearing the action without any further proceedings, if he finds that the reasons advanced in support of the denial are well founded, and shall answer the other

[1] A decision, whether granting or denying the consolidation, is not final for the purposes of an appeal for annullment of judgment.—*Decisions of September 28, 1866, October 15, 1868, January 12, 1870, September 29, 1871, and September 22, 1872.*

judge without delay in order that he may continue proceeding in the action.

This decision may be appealed from for review only.

ART. 180. If the judge who is requested to transmit the record should refuse to do so, basing his refusal upon a belief that the consolidation should be made with the actions pending before him, the requesting judge, after receiving the communication and certificate, shall, within the period of three days, which can not be extended, hear the party who has requested the consolidation, after which, or after recovering the records, he shall render the decision thereupon which he may consider proper.

ART. 181. In the case of the foregoing article, if the judge requesting the consolidation should believe that said consolidation should be made with the records pending in the other court, he shall order said consolidation made in the manner prescribed in article 177.

This decision may be appealed from for review only.

ART. 182. If the judge requesting the consolidation should find that the reasons advanced by the other for his refusal or claim are unfounded, he shall forward the records to the proper superior authority, with a citation of the parties, and shall notify the other judge in order that he may also transmit his records to the same authority.

By said superior authority is understood the authority having jurisdiction to decide questions of competency.[1]

ART. 183. The subsequent steps in this issue shall be according to the provisions prescribed for questions of competency, but the department of public prosecution shall not be heard therein.

ART. 184. The hearing of the actions involved in the consolidation shall be suspended during the pendency of the request for consolidation.

ART. 185. If neither of the judges should desist from their purpose, the suspension shall not be raised until the proper superior may have rendered his decision.

However, the suspension shall be considered raised when any decision has been rendered which may be appealed from for review according to articles 173, 176, 179, and 181, without prejudice to what may be proper after a decree to carry out the decision has been issued in view of the appeal taken.

ART. 186. By virtue of the consolidation, the proceedings consolidated shall be continued in one and the same action and shall be determined in one judgment.

ART. 187. When two or more actions are consolidated, the course of the one nearer completion shall be suspended until the others arrive at the same stage.

[1] From a ruling deciding a question of consolidation there lies only an appeal for breach of form, as in cases of questions of competency.—*Decision of May 27, 1886.*

This rule is not applicable to consolidations with proceedings relating to the settlement of estates, in which cases those consolidated thereto shall immediately be advanced to the same stage.

TITLE V.

CHALLENGES.

SECTION I.—*General provisions.*

ART. 188. Justices and judges, whatever be their rank or hierarchy, and assessors[1] to municipal judges who substitute those of first instance, and subordinate officials of superior and inferior courts, may be challenged only for a legitimate cause.[2]

ART. 189. The following are legitimate causes of challenge:

1. Relationship by affinity or consanguinity within the fourth civil degree with any of the litigants.

2. The same relationship within the second degree with the attorney of any of the parties to the action.

This shall be understood without prejudice to the prohibition which is imposed upon attorneys to act as such in actions in which any of their relatives within the same degrees are to act as judges.

3. To be or have been denounced by any of the parties as the principal, accomplice, or accessory in a crime, or as a principal in a misdemeanor.

4. To have been the counsel for any of the parties, to have made a report on the suit as an attorney, or to have taken part therein as the public prosecutor, or as an expert or witness.

5. To be or have been the guardian, or having been under the guardianship of any person who is a party to the action.

6. To be or have been the denouncer or private accuser of the challenging party.

7. To have an action pending against the challenging party.

8. To have a direct or indirect interest in the action, or in another similar action.

9. Intimate friendship.

10. Manifest enmity.

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[1] *Assessors to municipal judges:* The municipal judges or their substitutes take the place of judges of first instance and examination in accordance with article 69 of the organic law of the judicial service of September 15, 1870. If they are not attorneys they require an assessor who is an attorney, in accordance with article 71.—*Alcubilla, Diccionario de la administración española.*

Assessors to a judge are persons possessed of knowledge in the law who are appointed to advise and direct the decisions of the judges in certain inferior courts.—*Sweet's Law Dictionary.*

[2] An appeal for anullment of judgment does not lie from a decision on the challenge of judges, because they do not have the character of definite decisions, nor do they terminate an action, nor render its continuation impossible.—*Decision of January 19, 1885.*

ART. 190. Justices, judges, and assessors in whom any of the circumstances mentioned in the foregoing articles is attendant, shall abstain from hearing the matter without waiting to be challenged.

The same rule shall apply to the subordinate officials of audiencias and courts in similar cases.

There is no appeal whatsoever from these resolutions, without prejudice to the provisions of article 216.

ART. 191. Only legitimate parties to an action or persons having a right to be such, and who appear in the matter involving the challenge, shall have a right to interpose a challenge.[1]

ART. 192. The challenge shall be interposed in the first instrument submitted by the challenging party, if the cause on which it is based is prior to the action and he has knowledge thereof.

If subsequent thereto, or even though prior to the same, the challenging party should not have had knowledge thereof until after the institution of the action, he must interpose said challenge as soon as the cause comes to his notice.

Should this not be done, the challenge shall be disallowed.

ART. 193. In no case shall the challenge be interposed after the parties have been cited for judgment in first instance, nor after the hearing of the case has begun before the audiencia.

Neither shall said challenge be interposed in the proceedings for the execution of the judgment, unless it is based on legitimate causes which it is well known have arisen after judgment was rendered.

SECTION II.—*Challenge of justices, judges of first instance, and assessors.*

ART. 194. The challenge of the presiding and associate justices of the supreme court and of the audiencias, as well as of judges of first instance and municipal judges and their assessors, in a proper case, when they substitute those of first instance, shall be made in writing and subscribed by an attorney, by the solicitor when one takes part in the proceedings, and by the challenging party if able to sign and if he be at the place where the action is pending.

If the challenging party should not be present, the challenge shall be subscribed by the attorney and solicitor only, if the latter should be expressly authorized to challenge.

In any case the cause of the challenge shall be clearly and explicitly stated.[2]

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[1] If the instrument requesting a challenge does not contain the signature of the attorney and that of the person challenging, it can not be considered as made.—*Decision of February 7, 1862.*

[2] If the presiding judge of an audiencia attends the hearing of a case, if there be cause for challenge, he must be challenged as soon as he is seen to preside over the chamber.—*Decision of November 9, 1863.*

See amendments, etc., made for Cuba in orders Nos. 166 and 242, series of 1900, in Appendix.

instance of the judicial district in which the ecclesiastical judge or tribunal resides, to recover the record of the proceedings and forward the same, and immediately begin the institution of the proper criminal action.

In such case the application for modification of the action of the ecclesiastical court shall be considered as made by the transmission of said record.

ART. 137. When proof of the denial decreed by the ecclesiastical judge or tribunal has been presented before the proper court, or when the application has been directly made by the department of public prosecution, a decision shall be rendered admitting or denying the admission of said application.

ART. 138. The court shall order the admission when there are reasons leading it to believe that the ecclesiastical judge or tribunal has gone beyond the limits of his or its jurisdiction and powers. Otherwise it shall declare that the appeal was not well taken.

ART. 139. In the same order in which the court admits the application, it shall require by royal order that the ecclesiastical judge or tribunal transmit the records within three days, unless they should already be before the court as a consequence of the fulfillment of the prescriptions of article 136.

ART. 140. In the royal order issued in accordance with the provisions of the foregoing article, the ecclesiastical judge or tribunal shall be requested to cite the parties to appear within ten days, if willing, which period can not be extended, before the court hearing the application, for the purpose of asserting their rights.

ART. 141. If the parties appear by virtue of the provisions of the foregoing article, they shall be considered as parties to the application. Should they not do so, the application shall be heard without their attendance in the same manner and with the same effect as if they had been present.

ART. 142. The ecclesiastical judges and courts may cite their respective prosecuting attorneys to appear as parties before the ordinary jurisdiction.

The said ecclesiastical judges or courts shall have the same character of parties when they appear at the hearing of the application to sustain their acts and competency.

ART. 143. If the ecclesiastical judge or court should not forward the records of the proceedings demanded of him, the provisions of article 136 shall be observed.

ART. 144. If the judge of first instance, in compliance with the provisions of article 136, should forward the record to the court, he shall order notice thereof to be given to the parties thereto, citing them to appear for the purposes prescribed in article 140.

ART. 145. After the records of the proceedings have been for-

warded by the judge of first instance, in accordance with the provisions contained in the preceding articles, the application shall be considered as admitted by the mere fact that said record is before the court of competent jurisdiction.

ART. 146. In any case, after the records have been received by the audiencia, the application shall be heard and determined in the manner prescribed in this law for appeals upon incidental issues.

ART. 147. The representative of the department of public prosecution shall also be a party to the applications not made by the same, and he must in all cases attend the hearing thereof.

ART. 148. The court shall render a decision within eight days following the hearing, limiting itself to the following declarations:

1. That the application is not well taken, taxing the costs against the person making it and ordering that the record be returned to the ecclesiastical judge or court for the continuation of the proceedings according to law. In no case can the costs be taxed against the department of public prosecution.

2. That the ecclesiastical judge or court has wrongfully assumed jurisdiction in the matter, and ordering the same to vacate any impositions or punishments he or it may have imposed. In such case the costs may be taxed against the ecclesiastical judge or court, if he or it should, with well-known temerity, have assumed powers and jurisdiction which said ecclesiastical judge or tribunal did not have.

This order shall be communicated in writing to the ecclesiastical judge or court.

ART. 149. A report of every decision declaring that an ecclesiastical judge or court has wrongfully assumed jurisdiction shall be made to the government, a copy of said decision being also forwarded.

ART. 150. When it should be declared that an application is not well taken, the records of the proceedings shall be returned to the ecclesiastical judge or court, with the proper certificate, in order that he or it may proceed in the matter according to law.

ART. 151. After the return of the records of the proceedings, the costs shall be appraised and taxed. The audiencia shall issue the proper orders for their collection by judicial compulsion.

ART. 152. If it be declared that the ecclesiastical judge or court has wrongfully assumed jurisdiction, the records of the proceedings shall be forwarded to the judge of competent jurisdiction, and the parties who have appeared before the court shall be cited to appear before the competent judge, the ecclesiastical judge being given written notice thereof.

Decisions disallowing a challenge may be appealed from for review and for a stay of proceedings.[1]

ART. 209. After an appeal from a decision disallowing a challenge is filed and allowed, the parties shall be cited to appear before the proper audiencia within the period of ten days, for the purpose of asserting their rights; and the original separate record of the challenge shall be forwarded to the said audiencia.

ART. 210. These appeals shall be heard and determined in accordance with the procedure established for incidental issues.

ART. 211. If the challenge should be disallowed, the costs thereof shall always be taxed against the person interposing said challenge.

ART. 212. In addition to the costs mentioned in the foregoing article, the challenging party shall be fined not less than 125 or more than 250 pesetas, if the person challenged should be a judge of first instance and from 250 to 500 pesetas when the challenged party should be the presiding judge or an associate justice of an audiencia.

ART. 213. If the fines respectively mentioned in the foregoing article should not be paid, imprisonment shall be imposed upon the person in default in the manner and for the time prescribed by the penal code for criminal causes.

ART. 214. Upon the disallowance of the challenge, as soon as the ruling has become final, the case shall be returned to the original judge in order that he may proceed with the hearing thereof in accordance with law.

ART. 215. If the challenge be allowed, and the party challenged should be the presiding judge or an associate justice of a court, he shall not take further part in the hearing of the proceedings.

If the challenged party should be a judge of first instance, he shall also cease taking further part in the action, the hearing of which shall be continued by the judge to whom the records may have been transferred in accordance with the provisions of article 203.

If the judge challenged has ceased to perform his duties in the original court, on account of a transfer or for any other reason whatsoever, the case shall be returned to the said court in order that the hearing thereof may be continued by the new judge who may have taken the place of the one challenged.

ART. 216. If a judge of first instance shall voluntarily, or at the instance of a legitimate party, abstain from proceeding in an action, in

[1] A decision confirming a declaration that the challenge of a judge is disallowed does not have a final character, because it neither closes the action, nor does it make its continuation impossible.—*Decision of October 19, 1889.*

Neither is a ruling deciding a challenge of a judge or associate justice final for the purposes of annulment of judgment.—*Decision of January 19, 1885.*

See number 7 of article 1691 of this law, which authorizes an appeal for annulment of judgment by reason of a violation of these provisions.

accordance with the provisions contained in articles 190 and 197, he shall render a true report thereof to the presiding judge of the audiencia, who shall communicate the same to the chamber of administration thereof.

If said chamber should deem that the abstention is improper, it may impose disciplinary correction upon said judge, if there be sufficient cause therefor, communicating it in such case to the colonial department in order that the same may be entered in the personal record of the judge, for the proper purposes.

ART. 217. If the audiencia should reverse the decision disallowing the challenge, it shall send a copy of its ruling to the said department for the purposes of the foregoing article.

SECTION III.—*Challenge of municipal judges.*

ART. 218. In oral and other actions of which municipal judges take cognizance in first instance, the challenge shall be interposed at the time of the appearance.[1]

ART. 219. In view of the challenge, if the cause alleged should be of those mentioned in article 189 and be true, the municipal judge shall allow the same, transferring the cognizance of the cause to the judge who is to take his place.

If the challenge should be disallowed, he shall enter his ruling in the record and shall also transfer the cognizance of the cause to the proper judge.

There shall not be any remedy whatsoever against these decisions.[1]

ART. 220. For the purposes of the foregoing articles, municipal judges who may have been challenged shall be substituted—

By their respective substitutes, in towns where there is no other municipal judge.

Where there are two municipal judges, by the one not challenged.

If there should be three or more municipal judges, by the one next above him in length of service; should this seniority not be judicially determined, by the one next senior in age; and if the one to be substituted should be the oldest in length of service, by the junior one in point of appointment.

ART. 221. The secretary of the municipal judge challenged shall communicate the same to the judge who, in accordance with the provisions of the foregoing article, is to take cognizance of the question, so that he may order what he deems proper.

In the case of the second paragraph of article 219, the judge who is to pass upon the challenge shall require the parties to appear at a day and hour fixed within the next six days. He shall hear the parties at the time of said appearance, and shall at the same time receive the evi-

[1] See in Appendix order No. 242, Havana, June 18, 1900, amending this article.

clerks of chambers, and officials of the chambers of the supreme court; to relators, secretaries, and clerks of chambers of an audiencia, and to the clerks and secretaries of the courts of first instance, with the modifications established in the following articles.[1]

ART. 235. After the written challenge has been presented and the party presenting it has ratified it, in a proper case, the official challenged shall immediately after said challenge make a statement as to whether or not the cause alleged is true and legitimate, and shall transmit the papers to the proper person, who shall report thereon to the chamber or judge hearing the cause.

ART. 236. If the official challenged shall acknowledge the cause of challenge as true, the judge or court shall issue a written order, without further proceedings, allowing the challenge, if he deems that the cause alleged is one of those included in article 189.[2]

If he should consider that the cause alleged is not a legal one, the said judge or court shall disallow the challenge.

ART. 237. In such cases there shall be no remedy whatsoever against the decision allowing the challenge.

Against a decision disallowing a challenge, if rendered by the supreme court or by an audiencia, the only remedy is a petition for review before the same chamber, and if the decision were rendered by a judge of first instance, an appeal may be taken for review and for a stay of proceedings.

Upon the admission of the appeal, the original record relating to the challenge shall be forwarded to the audiencia, with a citation to the parties to appear within 10 days, the records of the main action remaining in the court.

ART. 238. When the subordinate official challenged should deny the truth of the cause alleged as a basis for the challenge, separate proceedings shall be ordered instituted in accordance with the provisions of article 199.

The party challenged may be a party thereto if he requests it, and such pertinent evidence which he may submit shall be admitted.

ART. 239. The separate challenge proceedings shall be heard:

In the supreme court and the audiencias, by the junior associate justice of the chamber hearing the proceedings in which the official was challenged, and said associate justice may delegate to the proper judge of first instance the power to carry on such proceedings in regard thereto which said justice may not be able to attend to.

In courts of first instance, by the judge hearing the main question.

ART. 240. Issues of challenge of assistants shall be decided by the same chambers or courts which are taking cognizance of the question

[1] See in Appendix Cuban order No. 242, July 18, 1900, amending this article.

[2] See order above mentioned in appendix.

in which the said assistant is acting, without further remedy, when the decision shall have been rendered by the supreme court or by an audiencia.

Neither shall there be any remedy against the rulings of judges of first instance admitting a challenge.

Decisions disallowing a challenge may be appealed from for review and for a stay of proceedings (*en ambos efectos*), the provisions of article 209 being observed.

ART. 241. In the case of the challenge of a secretary of a municipal court, the procedure prescribed for the challenge of municipal judges shall be pursued, the proceedings of challenge being heard and determined by the judge of the court in which the person challenged is performing his duties.

ART. 242. The assistants challenged, from the moment they are challenged, can not act in the respective proceedings nor in the challenge proceedings, and shall be substituted by the official of the same class, who may be senior to them in length of service, and if the official challenged should be the senior, he shall be substituted by the junior in point of appointment.

The secretaries of the municipal courts shall be replaced by their substitutes. Should they have no substitutes they shall be replaced by the person whom the judge may appoint.

ART. 243. In addition to the provisions contained in article 193, the assistants can not be challenged during the performance of any proceeding or act intrusted to them.

ART. 244. The challenge of assistants shall not suspend the course nor the decision of the cause or matter in which it has been interposed.

ART. 245. When a challenge is allowed the assistant challenged shall be taxed the cost of the issue, should he have denied the truth or legality of the cause alleged.

If a challenge should be disallowed, said costs shall be taxed against the challenging party in addition to the fees and charges mentioned in article 247.

ART. 246. As soon as a decision allowing a challenge becomes final the assistant challenged shall definitely cease taking part in any manner whatsoever in the proceedings, and the person who substituted him during the hearing of the issue shall continue acting, and the said assistant shall not be permitted to charge any fees whatsoever from the time the challenge was interposed.

ART. 247. If the challenge be disallowed, as soon as the decision becomes final, the assistant challenged shall reenter upon the discharge of his duties, and the challenging party shall pay him the fees for the work performed in the proceedings, without prejudice to paying the same fees to the person who may have substituted the assistant challenged.

clerks of chambers, and officials of the chambers of the supreme court; to relators, secretaries, and clerks of chambers of an audiencia, and to the clerks and secretaries of the courts of first instance, with the modifications established in the following articles.[1]

ART. 235. After the written challenge has been presented and the party presenting it has ratified it, in a proper case, the official challenged shall immediately after said challenge make a statement as to whether or not the cause alleged is true and legitimate, and shall transmit the papers to the proper person, who shall report thereon to the chamber or judge hearing the cause.

ART. 236. If the official challenged shall acknowledge the cause of challenge as true, the judge or court shall issue a written order, without further proceedings, allowing the challenge, if he deems that the cause alleged is one of those included in article 189.[2]

If he should consider that the cause alleged is not a legal one, the said judge or court shall disallow the challenge.

ART. 237. In such cases there shall be no remedy whatsoever against the decision allowing the challenge.

Against a decision disallowing a challenge, if rendered by the supreme court or by an audiencia, the only remedy is a petition for review before the same chamber, and if the decision were rendered by a judge of first instance, an appeal may be taken for review and for a stay of proceedings.

Upon the admission of the appeal, the original record relating to the challenge shall be forwarded to the audiencia, with a citation to the parties to appear within 10 days, the records of the main action remaining in the court.

ART. 238. When the subordinate official challenged should deny the truth of the cause alleged as a basis for the challenge, separate proceedings shall be ordered instituted in accordance with the provisions of article 199.

The party challenged may be a party thereto if he requests it, and such pertinent evidence which he may submit shall be admitted.

ART. 239. The separate challenge proceedings shall be heard:

In the supreme court and the audiencias, by the junior associate justice of the chamber hearing the proceedings in which the official was challenged, and said associate justice may delegate to the proper judge of first instance the power to carry on such proceedings in regard thereto which said justice may not be able to attend to.

In courts of first instance, by the judge hearing the main question.

ART. 240. Issues of challenge of assistants shall be decided by the same chambers or courts which are taking cognizance of the question

[1] See in Appendix Cuban order No. 242, July 18, 1900, amending this article.

[2] See order above mentioned in appendix.

in which the said assistant is acting, without further remedy, when the decision shall have been rendered by the supreme court or by an audiencia.

Neither shall there be any remedy against the rulings of judges of first instance admitting a challenge.

Decisions disallowing a challenge may be appealed from for review and for a stay of proceedings (*en ambos efectos*), the provisions of article 209 being observed.

ART. 241. In the case of the challenge of a secretary of a municipal court, the procedure prescribed for the challenge of municipal judges shall be pursued, the proceedings of challenge being heard and determined by the judge of the court in which the person challenged is performing his duties.

ART. 242. The assistants challenged, from the moment they are challenged, can not act in the respective proceedings nor in the challenge proceedings, and shall be substituted by the official of the same class, who may be senior to them in length of service, and if the official challenged should be the senior, he shall be substituted by the junior in point of appointment.

The secretaries of the municipal courts shall be replaced by their substitutes. Should they have no substitutes they shall be replaced by the person whom the judge may appoint.

ART. 243. In addition to the provisions contained in article 193, the assistants can not be challenged during the performance of any proceeding or act intrusted to them.

ART. 244. The challenge of assistants shall not suspend the course nor the decision of the cause or matter in which it has been interposed.

ART. 245. When a challenge is allowed the assistant challenged shall be taxed the cost of the issue, should he have denied the truth or legality of the cause alleged.

If a challenge should be disallowed, said costs shall be taxed against the challenging party in addition to the fees and charges mentioned in article 247.

ART. 246. As soon as a decision allowing a challenge becomes final the assistant challenged shall definitely cease taking part in any manner whatsoever in the proceedings, and the person who substituted him during the hearing of the issue shall continue acting, and the said assistant shall not be permitted to charge any fees whatsoever from the time the challenge was interposed.

ART. 247. If the challenge be disallowed, as soon as the decision becomes final, the assistant challenged shall reenter upon the discharge of his duties, and the challenging party shall pay him the fees for the work performed in the proceedings, without prejudice to paying the same fees to the person who may have substituted the assistant challenged.

TITLE VI.

JUDICIAL PROCEEDINGS AND PERIODS OF TIME.

SECTION I.—*Judicial proceedings in general.*

ART. 248. All judicial proceedings shall be written upon the stamped paper prescribed by the laws and regulations, subject to the penalties fixed therein.

Rulings which must be rendered *de oficio* in the cases prescribed by this law, and the proceedings for their fulfillment, shall be drafted on official stamped paper, without prejudice to payment therefor, when and in the manner proper.

ART. 249. Judicial proceedings shall be authenticated, under penalty of annulment, by the public official who is charged with the duty of attesting or certifying to the act.

ART. 250. The secretaries and recording clerks (*escribanos de actuaciones*) shall make a note of the day and hour of the presentation of instruments only in cases where a time certain is prescribed therefor.

Whenever a party requests it, a receipt shall be given him on common paper and at his expense for any instrument or document delivered to said clerks, stating the day and hour of its presentation.

ART. 251. Judicial decisions shall be rendered before the secretary or clerk charged with the duty of authenticating them.

The judges shall place their full signature on the first order made in each matter, as well as upon rulings and judgments, and their surnames on other orders of mere practice which they may render, and on the declarations and acts in which they may take part.

The judgments and decisions of an audiencia shall be signed with the full signature of the justices who may have rendered the same, and the presiding judge of the chamber shall affix his rubric to all orders.

The justice whose turn it is to prepare the case for decision (*magistrado ponente*) shall affix his surname to all proceedings had before him.

ART. 252. The secretaries and recording clerks shall authenticate with their full signature, preceded by the words "Before me," judicial decisions and other acts in which a judicial authority takes a personal part and the certificates or copies of papers which they may issue. Notices and other proceedings shall be authenticated with their surnames.

ART. 253. Rulings and orders made in proceedings in which relators take part shall be signed by them with their full signatures and with a statement of their official title before the signature of the clerk.

ART. 254. The judges and, in a proper case, justices charged with the duty of preparing the case for decision, shall personally receive the declarations and shall preside over the proceedings for the taking of evidence.

Said justices, nevertheless, may intrust these duties to a judge of first instance, and the latter to a municipal judge, when the proceedings are to be had in a town other than at their respective place of residence.

None of said judges, however, shall be permitted to intrust these duties to secretaries or recording clerks, except in the cases authorized by this law.

ART. 255. Proceedings which can not be had within the judicial district where the action is pending, must be committed to the judge of first instance of the district where said proceedings are to be had.

The latter shall comply with the provisions contained in the foregoing article.

SECTION II.—*Legal working days and hours.*

ART. 256. All judicial proceedings must take place on legal working days and during legal working hours, under penalty of nullity.[1]

ART. 257. Legal working days are all days of the year excepting Sundays, full religious or civil holidays, and the days when courts are ordered closed.[2]

ART. 258. Legal working hours are those between sunrise and sunset.[3]

ART. 259. Courts and judges may legalize illegal days and hours, at the instance of any party, should there be an urgent cause therefor.

For this purpose urgent causes shall be considered such proceedings in which delay may cause serious injury to the persons interested or to the good administration of justice, or which would nullify the effect of a judicial order.

The judge shall determine the urgency of the cause and shall decide what he may consider proper, without further remedy.

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[1] The mere filing of an instrument can not be classified as a judicial proceeding for the purposes of a declaration of nullity.—*Decisions of November 16, 1860, and December 12, 1861.*

[2] The provisions of this section are explained by the decisions of November 16, 1860, and December 12, 1861, according to which in judicial terms days are to be understood as natural days, that is, of the twenty-four hours between midnight of one day and that of the next, and consequently an appeal may be admitted provided that it is filed before 12 o'clock midnight on the last day of the term.

According to the organic law of the judicial service courts are closed on full holidays, on the feast days of the King, Queen, and Prince of Asturias, on Thursday and Friday of Holy Week, and on national holidays.

[3] If the greater portion of a judicial proceeding had taken place before sunset, and should be signed by artificial light, it would not be invalidated thereby.—*Decision of April 19, 1865.*

SECTION III.—*Notifications, citations, summonses, and requisitions.*

ART. 260. Notice of all orders, rulings, and judgments shall be given to the parties to the action on the day of their rendition, and should this not be possible, on the day following.

The same notice shall be given, when required, to persons referred to therein or who may be prejudiced thereby.

ART. 261. If, by reason of the length of the judgment, it should not be possible to prepare copies thereof for service within the period above mentioned, said service may be delayed for the time absolutely necessary, which period can in no case exceed five days.

ART. 262. Notices shall be served by the clerk, secretary, or official of the chamber authorized therefor, who shall read in full the order to the person upon whom service is made, and shall at the same time deliver to him a true copy thereof, signed by the recording clerk, even though said copy should not be demanded, stating the matter to which it refers.

A statement of the foregoing must be made in the proceeding.

ART. 263. The notices shall be signed by the clerk and by the person on whom service is made.

If the latter were not able to sign, a witness shall do so at his request.

Should he not wish to sign or provide a witness to sign for him, in a proper case, two witnesses summoned by the clerk for the purpose shall do so.

These witnesses can not refuse to sign under the penalty of a fine of from 15 to 65 pesetas.

ART. 264. Notices shall be served at the office of the clerk or in the place assigned in each court for this purpose, if the persons interested should appear in the same.

Should they not appear at the proper time, said service shall be made at their residence, for which purpose said residence shall be designated in the first instrument which may be filed.

ART. 265. If solicitors should not appear at the proper time in the office of the clerk or place assigned for the purpose, service shall be made upon them at their residence, but in such case the increase of costs arising from the proceeding shall be paid by them personally and can not be charged to their principals.

ART. 266. When the residence is known of the person upon whom service is to be made and at the first attempt he should not be found, whatever be the cause or the time of absence, service shall be made by writ (*cédula*) at the same time and without the necessity of a judicial mandate therefor.

ART. 267. Writs for notifications shall contain the following:

1. A statement of the character and object of the action or matter, and the names and surnames of the litigants.

2. A true copy of the order or resolution which is to be notified.

3. The name of the person upon whom notice is to be served, with a statement of the reason for making it in that manner.

4. A statement of the hour at which said person was sought and not found at his residence, and the date and signature of the serving clerk.

ART. 268. Said writ shall be delivered to the nearest relative, member of his household, or servant, over 14 years of age, who may be found within the dwelling of the person who is to be served, and if no one be found there, delivery shall be made to the nearest neighbor who may be found.

The delivery shall be vouched for in the records by means of a statement containing the name, status, and occupation of the person who received the writ, his connection with the party to be served, and the obligation of the former of delivering said writ upon his return to the residence, or to inform him thereof, if said person knows his whereabouts, under a penalty of from 15 to 65 pesetas. The obligation of the party receiving the writ shall be made known to him by the clerk.

Said statement shall be signed by the clerk, and by the person receiving the writ; and if the latter should not be able to sign or not wish to do so, the provisions of article 263 shall be observed.

ART. 269. When the residence of the person to be served is unknown, or if his whereabouts is unknown by reason of his change of residence, a statement shall be made thereof and the judge shall order that the service be made by posting the writ at the usual public place and by publishing it in the *Official Gazette* and in the official bulletins of the provinces where there may be such.

He may also order the publication of the writ in the *Gaceta de Madrid* when he deems it necessary.

ART. 270. The foregoing provisions relating to notices shall also be applicable to citations, summonses, and requisitions, with the modifications contained in the following articles.[1]

ART. 271. Service of citations and summonses upon those who are or who should be parties to the action, shall be made by writ delivered to the person to be cited instead of the copy of the order, a statement of said service being made in the proceedings.

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[1] The provisions contained in articles 270, 271, and 274 of this law are of general application with regard to the manner of issuing summonses, and therefore, all summonses issued by municipal courts to appear before the supreme court or before any other superior court must conform to these prescriptions.—*Decisions of July 23, August 27, September 13 and 22, 1884.*

When a certified copy of a judgment is delivered to a party requesting it, for the purpose of taking an appeal, the opposite party only has to be summoned to appear before the supreme court.—*Decision of October 30, 1884.*

ART. 272. The writ of citation shall contain—

1. The name of the judge or court issuing the order, the date of the latter, and the matter upon which it is based.

2. The name and surnames of the person upon whom service is to be made.

3. The purpose of the citation and the name of the party who requested it.

4. The place where and the day and hour when the person cited is to appear.

5. The admonition that if he fails to appear he shall suffer the penalty imposed by law; closing with the date and the signature of the clerk.

If the appearance is obligatory this admonition shall be made, and if a second citation becomes necessary by reason of the failure of the party cited to appear, he shall be warned in said citation that if he fails to appear, or if he does not show good cause for nonappearance, he shall be prosecuted for the offense of serious disobedience to the authorities.

ART. 273. The citation of the witnesses and experts, and other persons not parties to the action, when to be made officially, shall be made by a bailiff (*alguacil*).

For this purpose the clerk shall prepare duplicate writs, and the bailiff shall deliver one copy to the person cited, who shall sign his receipt on the other copy, which shall be attached to the record.

These citations may also be made by means of an official communication when the judge considers it advisable.

ART. 274. The writ of summons shall contain all the statements mentioned in numbers 1, 2, 3, and 5 of article 272, and shall contain in addition a statement of the period within which the person cited is to appear, and the superior or inferior court before whom said appearance shall be made.[1]

ART. 275. Requisitions shall be served by the delivery of a notice upon the person interested of the order in which it is made, in the form prescribed; the clerk shall make an entry in the proceeding stating that the requisition has been served as ordered.

ART. 276. No answer of the person interested shall be allowed nor stated in notifications, citations, and summonses, unless required in the order of the court.

In the case of requisitions the answer made by the person requested shall be allowed and succinctly entered in the proceeding.

ART. 277. If the citation or summons is to be made by means of letters rogatory or letters mandatory, the proper writ shall be attached thereto.

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[1] Court clerks who do not comply with the prescriptions of this article shall be disciplined, incurring a fine of from 25 to 50 pesetas.—*Decision of May 20, 1886.*

ART. 278. The writs for notifications, citations, and summons shall be written on ordinary paper.

ART. 279. All notifications, citations, and summonses not made in accordance with the provisions contained in this section shall be null.

Nevertheless, when the person notified, summoned, or cited shall have obeyed the same in the action, the proceeding shall from that time have the same effect as if said service had been made in accordance with the provisions of law.

The clerk shall not be relieved thereby from the disciplinary correction prescribed in the following article:[1]

ART. 280. The assistant or subaltern official who shall delay discharging the duties intrusted to him in this section, or should neglect to comply with any of the formalities established in the same, shall be disciplinarily corrected by the judge or court in whose service he may be, with a fine of from 65 to 125 pesetas.

He shall furthermore be liable for any damages or costs which may have been caused by his neglect.

SECTION IV.—*Service of notifications in the court room.*

ART. 281. In all actions and proceedings in which a litigant shall place himself or be declared in default for not appearing in the action after he has been formally cited, no further effort shall be made to secure his appearance.

All orders thereafter made in the action, and all citations and summonses which are thereafter to be served upon him, shall be served within the limits of the court room, except in such cases as is otherwise provided for.

ART. 282. The notifications, citations, and summonses referred to in the foregoing article shall be served by reading the orders which are to be served, or those ordering the citation to be made, at a public session of the judge or court issuing the same, and in the presence of two witnesses, who shall sign the proceeding which shall be attached to the record and authenticated by the court clerk.

ART. 283. The judgments and rulings of which notice is given within the limits of the court room and the writs of citations and summons to be served in the same, shall also be published by means of edicts, which shall be posted at the door of the place where the sessions of the judge or court are held, a statement thereof also being made in the proceedings.

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[1] Articles 279, 292, 295, 306, 314, 317, and 327 of this law refer to the order of the proceedings, and even though it should be violated it does not give rise to an appeal.—*Decision of February 3, 1883.*

As soon as the plaintiffs enter an appearance in an action, any breach of form in their citation is corrected, without prejudice to the disciplinary correction of the proper party.—*Decision of December 17, 1886.*

The adjudging part of definite judgments shall also be published in the official newspapers in the cases and in the manner prescribed by law. In such a case a copy of the newspaper in which the publication was made shall be attached to the record.

SECTION V.—*Letters requisitorial, letters rogatory, letters mandatory, and mandates.*

ART. 284. Judges and courts shall aid each other in the execution of all proceedings necessary and ordered in civil actions.

ART. 285. When a judicial order is to be executed other than at the place of trial of the action, or by a court or judge other than the one making the order, the latter shall commit the execution thereof to the proper person by means of letters requisitorial, letters rogatory, or letters mandatory.

Letters requisitorial shall be used when he applies to a court or judge higher in degree; letters rogatory when said execution is directed to one of equal degree, and letters mandatory when directed to a subordinate court or judge.

ART. 286. The provisions of the foregoing article shall be understood without prejudice to the right of judges of first instance to go to any place or town within their judicial district, for the purpose of executing their judicial orders (*diligencias*) in person, if they deem it advisable.

ART. 287. The judge or court which shall have ordered the execution of a judicial proceeding, can not address for this purpose judges or courts of a category or degree lower, who are not his subordinates, but he must deal directly with such of their superiors as exercise a degree of jurisdiction equal to his own.

ART. 288. A mandate shall be employed for the purpose of ordering the issue of certificates, or transcripts, or the fulfillment of any judicial order, the execution of which is imposed upon registrars of property, notaries, assistants, or subordinate officials of inferior or superior courts.

ART. 289. When judges or courts are obliged to direct requests to authorities or officials of another department, they shall do so by official communications or statements, as the case may require.

ART. 290. Letters rogatory and other letters shall be received by the superior or inferior court to which the request is addressed, without requiring the exhibition of a power of attorney of the person presenting the same, nor shall he be allowed to present any writing with said requests, unless it should be indispensable to do so for the purpose of giving explanations or information to facilitate their execution.

The proper clerk shall draft a statement at the end of the letters

rogatory or other letters, stating the date of their presentation and the person presenting the same, to whom he shall give a receipt; both shall sign this memorandum, and information thereof shall be given to the court or judge on the same day, and if this were not possible, on the next legal working day.

ART. 291. Letters rogatory and the other letters aforementioned, shall be delivered to the party at whose request they were issued, in order that he may superintend their execution.

If the opposite party requires it, a time shall be set for their presentation to the person to whom they are to be transmitted.

ART. 292. The person requesting letters rogatory or other letters, shall be obliged to furnish the stamped paper necessary, and shall pay the costs that may be incurred in their execution.

ART. 293. The provisions contained in the three preceding articles are not applicable to letters rogatory and other letters issued at the court's own motion (*de oficio*) or at the instance of a poor person. A receipt shall be given to the judge issuing said letters rogatory or other letters, and the action or proceedings requested shall also be performed officially and drafted upon official stamped paper.

ART. 294. The requesting judge may directly forward to the judge upon whom the request is made, letters rogatory issued at the instance of a well-to-do party, when the latter should request it, by reason of not having sufficient acquaintance at the place where the request is to be complied with.

In such cases said party must furnish the stamped paper which may be considered necessary for securing the information required, which shall be forwarded with the letters rogatory; he shall pay the postage and registration charges, and also all the expenses incurred in the compliance therewith, as soon as the bill therefor is received, as well as any other costs which may be incurred in enforcing payment by compulsory process, which shall be resorted to for their recovery, if said payments are not made within eight days.

All these facts shall be stated in the communication accompanying the request, and the judge of whom the request is made, shall cause the request to be complied with without delay.[1]

ART. 295. The judge or court who shall receive, or to whom are presented, letters requisitorial, letters rogatory, or letters mandatory, in proper form, if his own competency should not be affected thereby, shall order what may be proper for the execution of the request made therein, within the period fixed in the letters themselves, or otherwise, as soon as possible.

[1] When a judge, in complying with the request of another, exceeds the instructions received, his action does not produce any legal effect whatsoever, because he took the same without having jurisdiction.—*Decision of June 6, 1886.*

After the commission has been fulfilled, the letters shall be returned to the requesting party through the same channels by which they were received.

ART. 296. When the judge upon whom the request is made shall be unable to fulfill personally, either in whole or in part, the commissions entrusted to him, he may delegate the same to an inferior judge subordinate to him, by transmitting the original letters, or a communication containing all necessary statements, if he were obliged to retain the former for the performance of other proceedings which it should be necessary to undertake simultaneously.

ART. 297. The judge upon whom the request is made may also order that the letters rogatory be forwarded to another court, without returning them to the requesting judge, when he can not comply with said request for the reason that the person with whom the judicial proceedings are to be had, is in another jurisdiction.

ART. 298. The bearer of letters rogatory, letters requisitorial, or letters mandatory shall not be informed of the orders issued for the execution thereof, except in the following cases:

1. When it is requested in the said letters that some proceedings be had with the citation, intervention, or attendance of the person who may have presented the same.

2. When it is necessary to summon him to furnish some data or information which may facilitate the execution of the request.[1]

ART. 299. When the execution of letters rogatory or letters requisitorial shall be delayed, attention shall be called thereto by means of an official communication, transmitted at the instance of the party interested.

If, notwithstanding the communication, the delay continues, the requesting judge shall inform the immediate superior of the judge requested thereof, by means of letters requisitorial, and said superior shall impose a disciplinary correction upon the tardy judge, without prejudice to the greater liability which he may incur.

The same means shall be employed by the person issuing a request or letters mandatory to compel his tardy inferior to return the same fully executed.

ART. 300. When service of summons is to be made or any other judicial proceeding is to be performed in a foreign country, the letters rogatory shall be transmitted through diplomatic channels, or by the means and in the manner prescribed in treaties, and in the absence of treaties, as prescribed in the general provisions of the supreme government.

In any case, principles of reciprocity shall be observed.

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[1] Only in the two cases mentioned shall the bearer of letters rogatory, not a [illegible] proceedings, be informed of the orders issued for the fulfillment [illegible]ions of January 8, February 1 and 6, 1886.

The same rules shall be observed for the execution in the islands of Cuba and Porto Rico of the letters rogatory of foreign courts, requiring the performance of some judicial proceeding.[1]

SECTION VI.—*Judicial periods of time, compulsory process, and defaults.*

ART. 301. Judicial acts and proceedings shall take place within the period fixed for each of them.

When no time is fixed, it shall be understood that they are to take place without delay.

Any violation of the provisions of this article shall be disciplinarily corrected, according to the gravity of the case, without prejudice to the right of the party injured to demand any indemnity which may be proper for damages or other liabilities.[2]

ART. 302. Judges and courts shall, in a proper case, impose said disciplinary correction upon their assistants and subalterns without the necessity of said correction being requested by a party, and should they not do so, they shall in their turn incur liability.

Judges and courts shall also impose said correction upon their subordinates, when the matter in which said violation has been committed has been brought before them on appeal, or in any other manner, or when proper complaint has been made by any of the litigants.

ART. 303. Judicial periods of time shall commence on the day following the service of a summons, citation, or notification, and the last day of said period shall be counted.[3]

ART. 304. In no period of time designated by days, shall days be counted upon which judicial proceedings can not be taken.

Neither shall the days of the summer recess be counted in the period of time within which to take an appeal to the supreme court for annulment of judgment for breach of law, unless actions of unlawful detainer are in question, or proceedings of voluntary jurisdiction, or any other

[1] By royal order of March 9, 1888, it is prescribed that no letters rogatory or letters requisitorial shall be directed to foreign countries in civil matters, unless the person interested shall previously deposit in the central treasury an amount considered sufficient, in the judgment of the presiding judge of the audiencia, to cover the costs of the service and all other expenses which may arise in the matter.

Letters rogatory must be addressed to the foreign judges who are to execute them, and it is forbidden to forward them to the consuls, legations, or diplomatic representatives in the country where they are to be executed.

In letters rogatory of this character, it is prescribed that the clause offering reciprocity for the execution in Spain of similar requests be not omitted.

[2] Judicial periods of time are binding upon the parties, whatever be the judicial character of the litigant, even though he be the representative of the State.—*Decision of May 24, 1887.*

[3] These days are and must be understood as natural days, including the twenty-four hours from midnight to midnight, so that on the day of the expiration of a period instruments may be filed until twelve o'clock midnight.—*Decision of December 12, 1861.*

urgent matters which may be decided in the vacations chamber (*sala de vacaciones*).[1]

ART. 305. Periods of time designated by months shall be counted by natural months, without excluding illegal working days.

In such cases, if the period should terminate on a Sunday or other holiday, it shall be understood as extended to the following legal working day.

ART. 306. Periods of time, the extension of which is not expressly forbidden by this law, may be extended.

In order to grant an extension it is necessary—

1. That it be requested before the expiration of the period.

2. That good cause be shown therefor, to the satisfaction of the judge or court, without there being any remedy against his decision on the subject.

ART. 307. Not more than one extension can be demanded or granted; said extension may be granted for the period of time which the judge or court may consider reasonable, but in no case shall it exceed one-half that fixed by law for the term extended.

ART. 308. After the extendible periods, or the extension granted at a proper time, has elapsed, if the records be in the clerk's office, the provisions contained in article 520 shall be observed.

If the records should be in the possession of any of the parties, as soon as they are requested by the opposite party, the former shall be ordered to return them within twenty-four hours, under a penalty of not less than 25 nor more than 65 pesetas for every day upon which he shall fail to so return them. This fine shall be imposed personally upon the solicitor, if one should take part in the case, unless he shall prove his blamelessness.

If three days should elapse without the records being returned, the clerk shall, under his liability and without requiring a new order, proceed to recover them of the person in whose possession they may be; and if they should not at once be delivered to him upon demand, he shall inform the judge or court, so that an order may be issued for such proceedings to be instituted as are proper for concealment of process.

ART. 309. More than one writ for compulsory process shall not be allowed. The costs thereof and of the other proceedings until the return of the records, shall in every case be on the account of the person against whom said process is issued.

ART. 310. The periods fixed for the following can not be extended:

1. For appearance in an action.

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[1] For the purpose of taking an appeal for annulment of judgment the days of the summer recess are counted in proceedings of voluntary jurisdiction.—*Decision of November 11, 1889.*

Periods which can be extended which elapse before an extension has been applied for, become final.—*Decision of December 10, 1864.*

2. For the taking of dilatory exceptions.

3. For motions for a rehearing, appeals or petitions for modification or revocation of judgment (*recurso de súplica*), and for the preparation and interposition of the remedy of complaint against the refusal to allow an appeal.

4. To request the elucidation of some judgment, or to supply an omission therein.

5. For an appellant to appear before the superior court in obedience to the summons served in consequence of the admission of an appeal.

6. To appear before the superior court with the proper proof, for the purpose of enlarging an appeal allowed for a review of the proceedings (*en un efecto*).

7. To request a certificate of judgment for the purpose of taking an appeal for annullment of judgment, for breach of law or of legal doctrine, and to prepare it for presentation before the Supreme Court.

8. To take an appeal for annullment of judgment for breach of form.

9. To appear before the Supreme Court in consequence of the allowance of the appeal for annullment of judgment, or for interposing the remedy of complaint against the order by which the granting of a certificate of the judgment is denied, or the appeal disallowed.

10. In any other matter with regard to which there may be a clear and express declaration, to the effect that after a certain time has elapsed, no action, exception, remedy, or rights upon which the same are based, be litigated.

ART. 311. Periods of time which can not be extended, can not be suspended nor reopened by restoration or otherwise, after the expiration thereof.

Said periods of time can only be suspended during their course by reason of *force majeure* which prevents their utilization.[1]

ART. 312. After periods of time which cannot be extended have elapsed, the proceeding or remedy which could have been advanced, shall be considered as lapsed and forfeited by law, without the neces-

[1] If an action is brought against a municipality, and if the mayor is cited and summoned and should not enter an appearance, and a judgment is rendered in his absence and default, against the municipality, the latter has the benefit of restitution *in integrum*, the defence having been abandoned without article 311 of the law of civil procedure being opposed thereto.—*Decision of June 11, 1883.*

Restitution *in integrum* for damages caused to minors is not of those included in this article.—*Decisions of January 31, 1882, and June 2, 1886.*

The law of civil procedure does not establish any differences between colitigants, because the periods of time within which to appeal from orders, etc., can not be extended for any reason whatsoever, and can not be suspended after their termination by way of restitution nor for any other reason. The department of public prosecution is subject to the provisions of said articles.—*Decision of May 21, 1870.*

Restitution *in integrum* is not recognized in the Civil Code. (See articles 1299 and 1301.)

sity of compulsory process nor of entry of default, except in the case referred to in number 1 of article 310.

No petition or claim of any kind shall be admitted which conflicts with this provision, and if it should become necessary to recover the record in order to properly continue the proceedings, the procedure established in article 308 shall be followed.

TITLE VII.

DISPATCH, HEARING, VOTING UPON AND DECISION OF JUDICIAL MATTERS.

SECTION I.—*Ordinary dispatch and hearing.*

ART. 313. Proceedings for the taking of evidence and the hearing of actions and other judicial matters, shall be held in open court.

The ordinary dispatch of business shall also be publicly performed when requested by one of the parties.

ART. 314. Notwithstanding the provisions contained in the foregoing article, judges and courts may order, at their own instance or at the instance of a party, that the dispatch and hearing of matters be had behind closed doors, when so required by good order or good morals.

If this action is to be taken at the beginning of the hearing, after hearing the parties briefly thereupon, the court shall immediately decide what it may deem proper.

There shall be no remedy whatsoever against a decision on this point.

ART. 315. Secretaries and clerks shall, in the ordinary dispatch of business, make a verbal report on the same day on which instruments are presented or the decisions rendered, and should this not be possible, on the day following.

ART. 316. Orders for proceeding in a matter shall be issued at the time a report is made thereon, or within the two days following, at the utmost.

In audiencias, only in cases where a decision has to contain a statement of the reason for its rendition, or when there is necessity of examining data for the purpose of rendering it, can the respective chamber order that a report be made thereon by a relator.

ART. 317. Chambers shall meet with at least three and not more than five justices for the ordinary dispatch of business and for the decision of incidental issues. An agreement can only be reached by an absolute majority of votes.

ART. 318. Judges of first instance shall personally examine the causes and proceedings, before rendering decisions and rulings.

In an audiencia a report shall be made by the clerk of the chamber or by the relator, in a proper case, who shall prepare the proper brief when prescribed by law.

ART. 319. The relator shall state, at the end of the brief, under his personal liability, whether or not in the previous proceedings the prescriptions of this law with regard to periods of time and continuances, compulsory process, recovery of the record, and others relating to the order and form of procedure, have been observed, as well as whether or not unnecessary or unauthorized acts have been performed, and shall make a note of all defects or omissions which may appear, or state, otherwise, that the legal prescriptions have been observed in the procedure in the cause.

ART. 320. The relator shall make the briefs, strictly observing the the regular order in which they were ordered made. They shall only give preference to the matters mentioned in the following article.

ART. 321. Hearings of actions and incidental issues shall be set in the order in which they are at issue, and without the necessity of a request of the parties therefor.

From the foregoing are excepted proceedings for temporary maintenance, questions of competency, proceedings for consolidation, challenges, matters of unlawful detainer, summary proceedings relating to property, proceedings for the custody of persons, actions of lesser import and executory actions, denials of justice or of proof, and other matters which, by provision of law or by an order of the chamber, are to be preferred for very special reasons, and the hearing of which, after they are at issue, shall be set ahead of other matters which may be unset at the time.

It shall be the duty of the presiding judge of the chamber to set matters for hearing.

ART. 322. All actions shall be heard on the day set therefor.

If at the end of the hours set for hearing some matter, it should not be concluded, it may be suspended and continued to the following day or days, unless the presiding judge shall extend the time therefor.

ART. 323. The hearing of an action on the day set therefor can only be suspended in the following cases:

1. When the continuation of another cause from the preceding day shall prevent it.

2. On account of there not being a sufficient number of justices to render judgment.

3. On account of the death or cessation in the action of the solicitor of any of the parties.

4. By reason of the death of any of the litigants.

5. When a unanimous request is made therefor by the solicitors of the parties, alleging good cause in the judgment of the court.

6. On account of the illness of the attorney of the party requesting the suspension sufficiently proven to the satisfaction of the chamber, provided that said request be made 48 hours previous to that set for the hearing, unless the illness should have occurred after this period.

7. On account of the death of the spouse, or of any of the ascendants or descendants of an attorney in the action, occurring before the nine days prior to that set for the hearing.

8. When an attorney in the action is required to attend two hearings on the same day before different courts, which fact shall be properly proven, in which case the superior court shall have preference over the inferior one.

ART. 324. In the case of a suspension of a hearing, another day shall be set as soon as the reason for the suspension shall have disappeared, without altering the order of hearings already set.

ART. 325. For the hearings of causes or incidental issues, the chambers shall meet with the number of justices necessary to render judgment in the matter involved.

ART. 326. When it shall become necessary to make up the number of justices of a chamber, with justices from another, or with substitutes, before the commencement of the hearing the names of those designated shall be communicated to the solicitors of the parties, and the hearing shall at once be proceeded with, unless any of the justices shall at that time be challenged, even though verbally.

In such case the hearing shall be suspended, and the challenge being reduced to writing and presented before the third day, this issue shall be heard and determined in the manner prescribed.

If the challenge should not be presented within said period, it shall not be admitted, and the challenging party shall be fined the amount prescribed in article 212, and shall be taxed the costs of the suspension, a new day being set for the hearing of the cause as soon as possible.

ART. 327. In the case of the first paragraph of the foregoing article, if the hearing shall have been had on account of no challenge having been interposed, the voting for judgment shall be suspended for three days. The substitute justices may be challenged during this period, and after said period has elapsed, without a challenge having been interposed, the time for the rendition of judgment shall immediately commence to run.

ART. 328. If the challenge should be interposed within said period, and allowed, the hearing shall be vacated and it shall be had anew before competent justices, at the earliest day which can be set.

If the challenge be disallowed, the justices who attended the hearing shall render judgment, the period within which to render it beginning on the day following the decision upon the challenge.

ART. 329. If, after the beginning of the hearing of a cause, one or more of the justices shall fall ill or become otherwise unable to continue attending the same, and there should be no probability that the said justice or justices will be able to attend within a few days, a new [illegible]g shall be had, the number of justices being filled from among [illegible]ho should substitute those disabled.

If, notwithstanding the disability of one or more justices, a sufficient number shall remain to render judgment, a suspension shall not be necessary, nor a new hearing, in a proper case.

ART. 330. Hearings shall begin with the reading of the brief made by the relator; and in cases in which no brief has been made, with a succinct statement made by the said relator, or by the recording clerk of the chamber, of all matters tending to furnish information on the question at issue, when the law does not provide otherwise, after which the attorneys for the parties appearing thereat shall present their arguments in their order.

The latter may make a second argument, with the consent of the presiding judge, for the purposes of correcting facts or statements.

The hearing shall be considered as ended when the presiding judge pronounces the word "heard."

ART. 331. Parties to the action may, with the consent of the presiding judge, verbally state what they may deem proper for their defense at the conclusion of the hearing and before it is declared closed, or when any petition is presented on their behalf.

The presiding judge shall allow them to speak, as long as they confine themselves to the questions at issue and observe the proper respect.

ART. 332. The presiding judge shall call to order any attorney who clearly strays from the question at issue in his argument, or who loses time with impertinent and unnecessary arguments; and if he shall persist therein after having been admonished twice, permission to speak may be withdrawn from him.

ART. 333. It is the duty of the justice presiding at the hearing, assisted by the chamber, in a proper case, to preserve good order and to require that the respect and consideration due the court be maintained, at once correcting any offenses which may be committed, in the manner prescribed in title 13 of this book.

ART. 334. The hearing shall be entered upon the record by means of statements drafted by the relator or clerk of the chamber, stating the names of the justices composing the chamber, the names of the attorneys making the arguments, of the solicitors who may have attended, and the time consumed at said hearing.

If any of the attorneys for the parties shall raise any collateral matter at the hearing which requires a decision, it shall also be included in said statement, which shall be read, in such case, to the attorneys at the conclusion of the hearing, for their approval and signatures.

SECTION II.—*Justices "ponentes."*

ART. 335. A justice "ponente" shall be selected for each cause, all the justices of the chamber being selected for these duties in their turn, with the exception of the presiding judge thereof.

The presiding judge shall, nevertheless, also undertake said duties in his turn when for any reason whatsoever the number of justices of a chamber, including the presiding judge, should be reduced to three.

ART. 336. It shall be the duty of the ponente—

1. To report to the chamber with reference to the propriety of making any amendments in, or additions to, the abstract requested by the litigants. The records shall previously be delivered to the litigants for this purpose.

2. To examine and classify as to the pertinency of all interrogatories, depositions, and proposals of evidence submitted by the parties. Should any objections be made to the classification, it shall be decided by the chamber.

3. To preside at the presentation of all evidence and to receive any declarations which the chamber may order, without prejudice to the provisions of article 254.

4. To authenticate the ratifications and to make the appointments for the performance of every duty.

5. To verbally submit to the deliberation of the chamber all findings of fact and conclusions of law, and the decision which, in his judgment, should be rendered, but without making a draft thereof.

6. To draft the rulings and judgments agreed upon by the chambers, even though his vote has not been in accordance with that of the majority.

In such case, the presiding judge of the chamber may intrust the drafting of the judgment to another justice, if he considers it advisable by reason of special circumstances.

7. To read the judgment in open court.

Should he not be present in the chamber on the day the judgment is to be read, the presiding judge shall act in his place.

8. Any other duties which may be intrusted to the ponente by a special provision of law.

ART. 337. It shall also be the duty of the justice ponente to investigate whether legal formalities have been observed; whether or not instruments for which this law prescribes precise forms have been drafted in accordance thereto, or whether other abuses have been committed, either of commission or of omission, in the proceedings of the action, verifying those noted by the relator; and if there exists a mistake which should be corrected, he shall call the attention of the chamber thereto, in order that it may definitely determine what it may deem proper, for the purpose of correcting the same and to procure a punctual and strict observance of this law, in letter as well as in spirit, by all officials taking part in actions.

SECTION III.—*Voting and decisions in actions.*

ART. 338. After a hearing in a cause has been closed, any of the justices may demand the record for the purpose of making a private examination thereof.

When several justices request said record, the one presiding shall designate the period of time that each may retain the same, in order that judgment may be rendered within the time fixed therefor.

ART. 339. With the exception of the case referred to in the foregoing article, rulings and judgments shall be discussed and voted upon immediately after the hearing; and if this be not possible on account of other requirements of the service, the presiding judge shall set a day therefor, within the periods respectively fixed by law.

ART. 340. After the hearing, or after the citation for judgment, and before the rendition of judgment, judges and courts may order, in furtherance of justice:

1. That any document which they may deem necessary for the purpose of properly elucidating the rights of the litigants be brought before them.

2. Demand a judicial confession of any of the litigants of any facts which they may consider of importance in the question at issue, and which have not been proved.

3. That any investigation or appraisement be made that they may consider necessary, or that those already made be enlarged.

4. That any records which bear any relation to the action be brought before them.

There shall be no remedy whatsoever against orders of this character, and the parties shall not have any intervention therein, except that granted them by the court.[1]

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[1] The parties have no right to intervene in an act, the only object of which is to ascertain or explain some matter to the satisfaction of the judges.—*Decision of December 11, 1865.*

Orders in furtherance of justice are not issues such as are recognized by the law of civil procedure, nor are the parties given any other intervention therein, than that specifically designated in the order itself.—*Decision of April 9, 1866.*

Proceedings for the furtherance of justice are not instituted for private interests, but for a better administration of justice. Their admission, therefore, is to be passed upon by the court without affecting any right of the parties litigant.—*Decision of March 19, 1869.*

Judges may also order the examination of documents in the furtherance of justice.—*Decision of June 28, 1892.*

The absence of a citation of the parties to attend proceedings instituted for the furtherance of justice, does not constitute a breach of form, because the parties have no other intervention therein than that expressly granted them by the judge or court.—*Decision of July 8, 1885.*

ART. 341. The period within which the proceedings for the furtherance of justice shall be performed, shall be fixed in the said order, and if it be not possible to determine it, the judge or chamber shall see that said proceedings are executed without delay and shall, on his or its own motion, issue the reminders and compulsory process which may be required.

ART. 342. In such cases, the period within which judgment is to be rendered shall be suspended from the date of the order issued in furtherance of justice until it has been fulfilled, after which and during the remaining time, the proper ruling or judgment shall be rendered without a rehearing.

ART. 343. The discussion and voting for judgments and rulings shall always be held behind closed doors, and before or after the hours designated for the ordinary dispatch of business and for hearings.

After the voting has begun, it can not be interrupted except for an insuperable cause.

ART. 344. The ponente shall submit to the chamber for its deliberation, all questions of fact and of law and the decision to be included in the judgment, and the voting shall take place after the necessary discussion.

ART. 345. The ponente shall vote first, and afterwards the other justices in the inverse order of their seniority with regard to length of service. The presiding judge shall vote last.

ART. 346. When any justice should be transferred, retired, removed, or suspended, he shall vote upon all actions, the hearing of which he may have attended, and which have not as yet been decided.

ART. 347. If, after the hearing, any justice shall become disabled, to such an extent that he can not attend the voting, he shall give his vote in writing, properly based and signed, and shall forward it directly, under closed cover, to the presiding judge of the chamber. If he be not able to write or sign, he shall be assisted by the relator in the action.

The vote thus cast shall be attached to the others, and shall be preserved, together with the book of judgments, by the presiding judge and rubricated by him.

If said disabled justice should be unable to vote even in this manner, the voting in the action shall be done by the other justices who may have attended the hearing, should there be a sufficient number to form a majority. Otherwise, a new hearing shall be had with the presence of those who may have attended the former hearing, and with the justice or justices who are to replace those disabled.

ART. 348. Three concurring votes are necessary for the rendition of judgments by audiencias.

If the decision is to be rendered in the form of a ruling (*auto*), the votes of an absolute majority of the justices who shall have attended a hearing shall be necessary.

ART. 349. If there be a disagreement by reason of the absence of a sufficient number of votes to render judgment, it shall be adjusted in the manner prescribed in the following section.

SECTION IV.—*Manner of adjusting disagreements.*

ART. 350. If, in voting upon a judgment, ruling, or order of mere practice, there should not be a majority of votes upon any findings of fact or conclusions of law to be made, or upon the decision to be rendered, the discussion and voting upon the points not agreed upon shall be repeated.

If there should be no majority at the second voting, an order shall be made declaring a disagreement and ordering a new hearing before an increased number of justices.

ART. 351. The new hearing shall be held before the same justices who attended the previous one, and two additional ones, if there were an odd number of dissenting justices, and three, if the number were even.

ART. 352. The following shall attend, in the order given, for the purpose of adjusting disagreements:

1. The presiding judge of the court.

2. The associate justices of the respective chamber who have not heard the action.

3. The senior justices in length of service of the other chambers, with the exception of the presiding judges thereof.

ART. 353. The presiding judge of the court shall set the time for the hearing of matters upon which there has been a disagreement, after receiving notice thereof from the presiding judge of the proper chamber, and after designating the justices who are to adjust said disagreement.

ART. 354. The names of the justices who are to adjust the disagreements, shall be made known to the litigants in due time, in order that they may allege their rights of challenge, if proper.

ART. 355. The disagreeing justices shall state with clearness, in the order declaring the disagreement, the points on which they agree and those upon which they disagree, and shall confine themselves to deciding such questions, with the justices adjusting the disagreement, upon which no agreement has been reached.

ART. 356. Before commencing to hear an action upon which there has been a disagreement, the presiding judge of the chamber who is to adjust said disagreement shall ask the disagreeing justices whether they insist in their opinions, and only in case of an affirmative answer shall the hearing be continued.

If, upon voting on a judgment disagreed upon, the disagreeing justices should come to an agreement in sufficient number to form a majority, the proceedings shall not be continued.

ART. 357. If, upon voting on a judgment by a chamber sitting to adjust a disagreement, there should not be a majority upon the points disagreed upon, a new vote shall be taken, but only upon the two opinions which obtained the greater number of votes at the preceding one.

TITLE VIII.

MANNER AND FORM IN WHICH JUDICIAL DECISIONS SHALL BE RENDERED.

SECTION I.—*Judgments.*

ART. 358. Judgments must be clear, precise, and congruent to the pleadings and other allegations duly advanced in the action, and shall contain the declarations required by the latter, deciding for or against the defendant all questions which have been the object of the arguments.[1]

If there should be several issues, the decisions pertaining to each shall be separately rendered.[2]

ART. 359. If there should be an adjudication of profits, interests, losses, or damages, the net amount thereof shall be determined or the bases shall be fixed according to which the liquidation is to be made.

Only in cases in which it is impossible to do either, shall an adjudication be made, reserving the right to fix the amount thereof and its enforcement in the execution of the judgment.[3]

ART. 360. Judges and courts can not, under any pretext whatsoever, postpone, delay, or refuse to decide questions discussed in the action.[4]

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[1] A judgment is congruent to the pleadings when it grants the support mentioned in article 1100 of this law, even though the plaintiff should call the same provisional or temporary, if it be clearly deduced from the terms and bases of the petition that the support mentioned in said article is referred to, and not the maintenance included in articles 1609 et seq.—*Decision of December 24, 1888.*

[2] A judgment which grants less than is requested is not incongruent.—*Decision of January 4, 1887.*

A judgment which, in revoking a ruling appealed from, does not decide as to the delivery of certain estates, etc., relating to the estate of a deceased person, which questions had been decided by the lower court and had been the subject-matter of the express petition of the party taking the appeal, violates the provisions of this article.—*Decision of January 14, 1884.*

[3] Art. 360 of the law of civil procedure presupposes as a fundamental basis for the adjudication of losses and damages, the legal proof of their existence, and, therefore, a chamber which condemns the defendant to pay the losses and damages which may have been caused to the estates, the subject of the litigation, etc., violates the provisions of this article, because the judgment is uncertain.—*Decision of January 4, 1887.*

[4] A judgment which reserves for another action the decision of one of the questions raised in the action, violates this provision, as does also the judgment which reserves to the plaintiff the right which may pertain to him.—*Decisions of July 9, 1885, and December 18, 1868.*

ART. 361. Notwithstanding the provisions of the foregoing article, courts and judges, when they are to base their judgment exclusively upon the purported commission of a crime, shall suspend the decision of the action, until the termination of the criminal proceedings, if, after hearing the department of public prosecution, they should consider the institution of a criminal action proper.

The order of suspension may be appealed from for review and for a stay of proceedings.[1]

ART. 362. Neither shall judges nor courts be permitted to change or modify their judgments after they are signed, but they may elucidate any obscure point or supply any omission they may contain, upon a point discussed in the action.[2]

These elucidations or additions may be made, on the court's own motion, on or before the legal working day following the publication of the judgment, or, at the instance of a party, on or before the day following the notification.

In the latter case, the judge or court shall decide what may be considered proper, on or before the day following the presentation of the instrument requesting the elucidation.[3]

ART. 363. In inferior courts the judgments shall be drafted by the judge who renders the same, who, after entering them upon the record, shall sign and read them in open court, the clerk or secretary authenticating their publication.

ART. 364. In the supreme court and in audiencias, after the judgment has been prepared by the ponente, in accordance with the pro-

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[1] In order to consider a document false, it is necessary that a clear and express declaration of its falsity be made in the judgment.—*Decision of March 6, 1861.*

[2] The elucidation of a judgment rendered by a court, having been requested because nothing was provided therein relating to the reconvention made in the action, the judge supplemented the judgment absolving the plaintiff therefrom and allowing the appeal taken. After the record had been transmitted to the higher court a judgment was rendered confirming that appealed from, with costs. The appellant also demanded an elucidation with regard to the reconvention, but the chamber declared that an elucidation was not necessary, because the elucidation ordered by the court had not been the object of the appeal. An appeal for annullment of judgment having been taken, the supreme court decided that the explanations or additions which courts make in their judgments, in view of the privilege granted them by article 362 of the law of civil procedure, constitute part of the judgment itself, and the appeals taken are considered to embrace said additions or explanations, for which reason the adjudging chamber in this case should not have refused to render judgment on the question of the reconvention, added to its judgment by the judge of first instance, and this question not having been decided, it is evident that article 358, invoked by the appellant, has been violated.—*Decision of November 17, 1887.*

[3] The correction of an arithmetical error does not constitute a real change in the judgment, and still less so, when it was requested and made within the legal period.—*Decision of November 6, 1884.*

The elucidations or additions made by courts in judgments, constitute a portion of said judgments, and appeals taken by the parties are understood to include said additions or elucidations.—*Decision of November 17, 1887.*

visions of number 6 of article 336, and after having been approved by the chamber, it shall be drafted on official stamped paper and signed by all the justices who may have rendered it; shall be read in open court by the ponente, and in his absence, by the presiding judge of the chamber, the publication thereof being authenticated by the proper secretary or clerk of the chamber.

The latter shall enter in the record a literal certified copy of the judgment and of the fact of its publication, countersigned or visèed by the presiding judge of the chamber, who shall recover and keep the original for the purpose of forming the register of judgments, in the manner prescribed in the regulations or in special provisions.

ART. 365. If, after an action has been decided by a court, one of the justices who voted at said decision should become unable to sign, the one who presided in the chamber shall do so for him, stating the name of the justice for whom he signs and placing thereafter the words: *Voted in chamber, but was unable to sign.*

ART. 366. Every justice taking part in the voting for a judgment, shall sign the decision agreed upon, even though he shall have dissented from the majority; but he may, in such case, explain his vote, writing, basing, and inserting it with his signature at the bottom, within the twenty-four hours following, in the book of reserved votes (*votos reservados*).

ART. 367. Private reserved votes shall not be inserted in the certificates of the judgments, but must be forwarded to the supreme court in the cases prescribed, and always when the record is transmitted to the same. They shall be made public when an appeal for annullment of judgment is taken and allowed.

SECTION II.—*Form in which judicial resolutions shall be rendered.*

ART. 368. The resolutions of superior and inferior courts in matters of a judicial character shall be called—

Providencias,[1] when they are of mere practice.

Autos (rulings), when deciding incidental issues or points which determine the disputed personality of any of the parties, the competency of the inferior or superior court, the allowance or disallowance of a challenge, the striking out of a complaint, the allowance or disallowance of exceptions, the refusal to admit a counterclaim, the refusal to admit evidence or any proceeding therefor, those which may cause irreparable injury to the parties, and others deciding any other incidental matter, when it is not prescribed that a judgment be rendered thereon.

Sentencias (judgments), when finally deciding the questions at issue in an action in one instance, or in an extraordinary remedy; or when

[1] This has been translated "*Orders*" or "*Orders of mere practice.*"

in deciding an incidental issue, it puts an end to the main issue which was the object of the action, making the continuation thereof impossible, and decisions which allow or refuse to allow a litigant to be heard, after he has been declared in default.

Final judgments, when, by their nature or by agreement of the parties, there should be no ordinary or extraordinary remedy against them.

Ejecutoria, the public and formal instrument in which a final judgment is entered for enforcement.

ART. 369. The formula for orders of mere practice shall be limited to the order of the judge or court, without any bases or additions other than the date thereof and the name of the judge or chamber issuing the same.

ART. 370. The formula for rulings (autos) shall be based upon *resultandos* and *considerandos*, both concrete and confined to the particular question decided, the name of the judge or court deciding the same, and the place and date upon which the decision was made.

ART. 371. Final judgments shall be drafted as follows:

1. The place, date, and judge or court rendering the same, the names, domicile, and profession of the parties litigant, and the character in which they litigate, the names of their attorneys and solicitors, and the object of the action.

There shall also be stated, in a proper case, and before the "considerandos," the name of the justice *ponente*.

2. In separate paragraphs, which shall begin with the word *resultando* there shall be clearly and concisely stated the contentions of the parties, and the facts that have been properly alleged and on which the same are based and which are connected with the questions to be decided.

In the last *resultando*, there shall be stated whether the provisions of law have been observed in the course of the proceedings, and stating, in a proper case, the defects or omissions that may have been committed.

3. The points of law alleged by the parties shall also be considered in separate paragraphs, beginning with the word *considerando*, giving the reasons and legal principles which are considered proper for the decision, and citing the laws or precedents which may be considered applicable to the case.

If, during the course of the action, any defects or omissions should have been committed which should be corrected, they shall be stated in the last *considerando*, mentioning, in a proper case, the doctrine to be followed for a correct observance and application of this law.[1]

[1] Against the violations of regulations committed during the course of judicial proceedings, the ordinary appeals granted by the laws may be utilized for the purpose of repairing the injury which said violation may cause the parties, and if these

4. Finally, judgment shall be pronounced in the manner prescribed in articles 358 and 359, and such statements as may be necessary to correct any errors which may have been committed in the proceedings shall be set forth.

If said errors should deserve disciplinary correction, it may be imposed in a reserved resolution, when this is considered advisable.[1]

ART. 372. The supreme court and the audiencias shall see that the provisions of the preceding article are complied with, and shall, therefore, duly admonish their subordinate courts and judges when they have not conformed to the rules prescribed therein, and shall impose upon them such other disciplinary corrections which may be proper.

ART. 373. The *ejecutorias* shall be headed in the name of the King.

The final judgments shall be inserted therein, as well as the previous ones, if the latter form a complement to the former.

If the transcript is issued at the instance of a party, for the protection of his interests, there shall also be inserted such documents, instruments, and proceedings which he may designate, and at his cost.

ART. 374. Orders of mere practice, rulings, and judgments must be issued within the period of time prescribed by law for each.

The judge or court who should fail to do so, shall be disciplinarily corrected, unless there should be good cause, which shall be entered in the record.

TITLE IX.

REMEDIES AGAINST JUDICIAL RESOLUTIONS AND THEIR EFFECTS.

SECTION I.—*Remedies against resolutions of judges of first instance.*

ART. 375. Against orders of mere practice issued by judges of first

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remedies should not have been used, acts consented to and carried out can not be returned to.—*Decision of May 7, 1888.*

The explicit precepts of this article are violated when no law or doctrine whatsoever is cited in the judgment in support of the declaration made therein.—*Decision of April 14, 1860.*

The violation of this article can never give rise to an appeal for annullment of judgment.—*Decisions of January 4, September 29, and October 19, 1866, and June 30, 1865.*

[1] The decision of questions of fact is of the exclusive jurisdiction of the adjudging chamber.—*Decisions of June 16 and 30, 1876; January 18, 1883, and May 21, 1883.*

An adjudging chamber does not violate any laws by considering and combining various elements, in order to deduce its true belief.—*Decision of February 19, 1879.*

According to jurisprudence of the supreme court, the taxation of costs in the first instance is of the exclusive competency of the superior courts, who are to consider the good or bad faith of the litigants.—*Decision of October 7, 1879.*

The decision in the second instance does not have to be confined to a declaration in the last *resultando* as to whether the legal prescriptions have been observed or not in the course of the proceedings of the appeal, but must contain a similar declaration with regard to the first instance.

instance there shall be no other remedy but an application for a rehearing, without prejudice to which the order shall be executed.

In order that this application be allowed, it must be made within the third day, and the provision of this law which has been violated must be cited.

If these two requisites have not been complied with, the judge shall disallow the application *eo instanti* and without further remedy.[1]

ART. 376. A rehearing of other orders and rulings made by a judge of first instance may also be requested within five days, excepting those mentioned in article 381.

ART. 377. When an application for a rehearing has been presented in the proper manner and within the proper time, a copy thereof shall be delivered to the adverse party, who may object to the application, if he should care to do so, within the three days following.

When there are several colitigant parties, said period shall be common for all of them.

ART. 378. After the period above mentioned has elapsed, whether or not written objections have been filed, the judge shall, on or before the third day following, decide what he may consider proper.

ART. 379. From a ruling deciding on an application for a rehearing or the orders and rulings referred to in article 376, an appeal may be taken on or before the third day thereafter.

ART. 380. When the rehearing refers only to the orders of mere practice, mentioned in article 375, there shall be no remedy whatsoever against a ruling deciding the same, except the right to institute an action for liability, and the right to request in the second instance, that the error be cured when proper.

ART. 381. Final judgments in all matters and rulings deciding dilatory exceptions and incidental issues, may be appealed from within five days.[2]

ART. 382. The appeals may be allowed for a review only, or for a review and stay of proceedings also.

They shall be allowed for review only in all cases in which it is not

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[1] Orders of mere practice (*providencias*) are those issued for the purpose of conducting the action in the manner prescribed by law.

An order requiring that the record be delivered to the relator for the preparation of a brief is not an order of mere practice, when a question is involved in which the appeal is not interposed at the proper time.—*Decision of July 9, 1887.*

[2] No appeal lies to the audiencia of the territory from the orders and other resolutions rendered by judges of first instance in actions brought before them on appeal from municipal courts of their district and which are of the competency of the latter in first instance, because the law does not authorize a third degree of jurisdiction in any kind of actions.—*Decision of September 13, 1884.*

When an appeal is interposed in due time without the signature of an attorney, although it can not be passed upon until the defect is cured, the lapse of the period of time is interrupted, and after the defect is cured said appeal must be admitted.—*Decision of December 26, 1883.*

prescribed that they be allowed without limitation or for a review and stay of proceedings also.[1]

ART. 383. In addition to the cases expressly mentioned in the law, the following appeals shall be allowed for review and for a stay of proceedings:

1. Appeals from definite judgments in all kinds of actions, when not otherwise provided by law.

2. Appeals from rulings and orders which put an end to an action, rendering its continuation impossible.

3. Appeals from rulings and orders which cause definite and irreparable injury.[2]

ART. 384. In the last case of the foregoing article, if the judge allows the appeal for a review only, because he does not consider the injury irreparable, and the appellant insists upon the contrary, on or before the third day thereafter, the appeal shall be allowed for a review as well as for a stay of the proceedings, provided that the appellant, within a period not to exceed six days, furnishes a bond to the satisfaction of the judge to indemnify the opposite party or parties, in a proper case, for all costs or damages they may incur or suffer.

If the audiencia shall affirm the ruling appealed from, it shall condemn the appellant to the payment of said indemnities, and shall moderately fix the amount of said losses and damages.

The indemnity therefor shall not be less than 250 nor more than 2,500 pesetas for each of the opposite parties, in addition to the costs.

ART. 385. If an appeal is taken in time and in proper form, the judge shall allow it without any further proceeding, if proper, stating whether it is allowed for a review of proceedings only, or for a review and stay of the proceedings.

ART. 386. If the appeal has been allowed for a review and stay of proceedings, the judge shall forward the original record to the superior court within six days, under his liability and at the cost of the appellant, first citing and summoning the solicitors of the parties to appear before said court within the period of twenty days.

ART. 387. In the case of the foregoing article, the execution of the judgment or ruling appealed from shall be suspended until the superior court renders a decision thereupon.[3]

ART. 388. The jurisdiction of the judge over the principal issue and over incidental issues which may arise, shall also be suspended from the

[1] A ruling allowing an appeal for review only is not final for the purposes of an appeal for annulment of judgment.—*Decision of July 7, 1886.*

[2] An appeal for annulment of judgment does not lie when based on a violation of this article, because the latter relates to mere practice only.—*Decision of June 8, 1885.*

[3] If a decision is appealed from, even though it be in one of its issues only, it does not acquire the character of a *res judicata* in any of them.—*Decision of January 11, 1876.*

moment he allows an appeal therefrom for a review and for a stay of proceedings.[1]

ART. 389. The following are excepted from the provisions of the foregoing article, and the judge may continue exercising jurisdiction over the same:

1. Issues heard and determined in a separate record, instituted before the appeal was allowed.

2. All matters relating to the administration, custody, and care of property attached or under judicial control, provided that the appeal does not involve one of these points.

3. Matters relating to the security and custody of persons.

ART. 390. The execution of the judgment, ruling, or order appealed from shall not be suspended, when the appeal has been allowed for a review of the proceedings only.

In such case, if the appeal should be from a final judgment, an authenticated statement of all that is necessary for its execution shall remain in the court, the record being forwarded to the appellate court in the form and manner prescribed in article 386.

If the appeal should be from a ruling or order, the appellant shall be furnished, at his cost, a certified copy of the contents of the record, with such additions as may be made by the colitigant and those which the judge may consider necessary to enable him to apply to the audiencia.

The appellant must request said copy within five days, stating the details it should contain. Upon the expiration of this period without having requested it, the said statement or copy shall be denied him and the decision appealed from shall be considered final.[2]

ART. 391. At the end of the statement or copy mentioned in the last two paragraphs of the foregoing article, the citation shall be entered, summoning the parties to appear before the appellate court within the period of fifteen days, and the fact of service thereof upon the appellant's solicitor shall be therein stated.

ART. 392. Within the fifteen days following the date of the deliv-

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[1] By virtue of the provisions contained in this article, judges are not permitted, after allowing an appeal for a stay of proceedings and for a review, to change the state of the records nor that of the evidence taken, nor to order, therefore, that documents be removed and delivered to the parties who presented the same, and certified copies put in their place.—*Decision of September 13, 1884.*

[2] The ruling from which an appeal for review was allowed shall become final, if the appellant does not request the statement within the period of five days.—*Decision of January 16, 1885.*

Although the signature of an attorney is necessary to the instrument requesting said statement, if the first application did not contain it, the defect must be corrected; but if the application is made in due time it interrupts the lapse of the period and the appeal must be allowed.—*Decision of December 26, 1883.*

ery of the statement, the appellant must make use thereof and perfect his appeal before the appellate court.[1]

ART. 393. When any appeal has been allowed for a review only, the appellant may request the audiencia to declare it allowed for a stay of proceedings also, citing the legal provision upon which said request is based.

This application must be made within the time fixed for his appearance, if the appeal were from a final judgment, and otherwise at the time when the authenticated statement is presented for the purpose of perfecting the appeal.

ART. 394. If, at the time said request is made by the appellant, the respondent has entered his appearance before the appellate court, a copy of said instrument shall be served upon him in order that he may object thereto, if he so desires, within the three days following, upon the expiration of which, the audiencia, without further proceedings and without remedy, shall render the decision it believes conformable to law.

ART. 395. If the audiencia shall deny the application above mentioned, the costs of the issue shall be taxed against the appellant, and the appeal shall take the proper course.

If the appeal is admitted for a review and stay of proceedings, an order shall be made requiring the judge of first instance to suspend the execution of the judgment or forward the original record, as the case may be, the parties being notified thereof.

ART. 396. The respondent may also request the audiencia, within the period set for the appearance, that the appeal which was allowed by the lower court for a review and for a stay of proceedings, be declared as allowed for a review only, citing the legal provisions on which he bases his request.

This application shall follow the same course as prescribed in article 394. If the appellate court should grant the same, an order shall be issued requiring the judge of first instance to execute the judgment appealed from, and attaching a certified copy of the latter to said order.

If the matter on appeal is a ruling or order, requiring that the record remain in the lower court for its continuation, it shall be returned to the same, a certified copy of all that is necessary for the determination of the appeal being retained.

ART. 397. Against the rulings or orders of judges of first instance disallowing an appeal, the appellant may seek the remedy of complaint before the respective audiencia.

This remedy must be prepared by requesting within five days there-

[1] The period within which to perfect an appeal can not be extended on account of its nature.—*Decision of December 5, 1861.*

after, a rehearing of the subject-matter of the ruling or order, and if it be denied, a certified copy of both resolutions.

If the judge should deny the rehearing, he shall order at the same time that, within the six days following, said certificate be given to the party interested, the date of the delivery being entered by the recording clerk at the end thereof.

ART. 398. Within the fifteen days following the delivery of the certificate, the party who requested the same shall be obliged to make use thereof, filing his complaint in the audiencia.

ART. 399. The said complaint, together with the copy, having been presented in time, the audiencia shall cause an order to be issued requiring the judge of first instance to make a report with the reasons for his action, and after this report has been received, the audiencia shall decide what it may deem just, without further proceedings.

If the disallowance of the appeal be considered proper, it shall cause the judge to be informed thereof by means of letters mandatory, in order that it may appear in the record.

And if it deems that the appeal should have been allowed, it shall so declare, stating whether it is to be considered as allowed for a review only or also for a stay of proceedings, and shall order the judge, according to the cases, to transmit the original record, as prescribed in article 386, or that the appellant be furnished the certified copy referred to in articles 390, 391, and 392, in the form and for the purposes prescribed therein.

SECTION II.—*Remedies against resolutions of audiencias.*

ART. 400. Against orders of mere practice made by audiencias, there shall be no remedy whatsoever, except an action for liability.

ART. 401. Against judgments or rulings deciding incidental issues which are raised during the course of the second instance, there shall be a remedy of complaint to the same chamber within five days.[1]

The practice for this remedy shall be the same as is provided for rehearings in articles 377 and 378, the decision being rendered after a report from the justice ponente.

ART. 402. Against final judgments and rulings which put an end to an action, rendered by audiencias at second instance, there shall be no remedy but an appeal for annulment of judgment, in the cases and in the manner prescribed in title 21 of book 2 of this law.

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[1] That is to say, in issues occurring and raised during the second instance.—*Decision of October 6, 1862.*

This does not take place when there is an express provision of law in contravention thereof, as is the case in article 868 of this law.

And therefore a request should not be made to have the record transferred to another chamber, as it would be illegal.—*Decision of March 2, 1863.*

Against other decisions which they render on appeal, there shall be no remedy whatsoever, except the action for liability.[1]

ART. 403. An appeal for annulment of judgment shall also lie from the final judgments rendered by audiencias in matters submitted to the same in original and only instance, and from rulings deciding the remedies of complaint established in article 401, when they have the character of final judgments.

SECTION III.—*Remedies against decisions of the supreme court.*

ART. 404. The provisions of articles 400 and 401 shall be applicable to decisions of a similar character rendered by the supreme court.

ART. 405. There shall be no remedy against decisions granting, denying, allowing, or disallowing appeals for annullment of judgment, except that of revision or of criminal liability, in a proper case.

SECTION IV.—*Provisions common to superior and inferior courts.*

ART. 406. In cases in which an elucidation of a judgment is requested, in accordance with the provisions of article 362, the period within which to interpose the remedy which may be proper against the same judgment, shall be counted from the date of the notification of the ruling granting or denying the elucidation.

ART. 407. After the periods fixed for the preparation, interposition, or perfection of a remedy, without seeking the benefit thereof, the subject-matter of the judicial decision shall be considered *res judicata* without the necessity of an express declaration therefor.

ART. 408. A litigant who should have taken an appeal or interposed any other remedy, may abandon the same before the judge or court rendering the decision appealed from, if he does so before the record has been forwarded to the appellate court, or before a certificate or authenticated copy has been delivered to him for the purpose of taking or perfecting the appeal.

He may also do so after having received this document, if he returns

[1] In the law of civil procedure an appeal for annulment of judgment to the chamber which rendered the final judgment is unknown, even though it was rendered on false testimony.—*Decision of March 22, 1866.*

Although a judgment rendered on false testimony or documents may be revoked and rescinded, it is indispensable that the falsity be proved and that the decision was rendered by virtue thereof and not for any other reasons, in accordance with the provisions of laws 1 and 2, title XXVI, Partida 3, in accordance with the Roman laws, Digest 33, *De re judicata*, 3rd and 4th Code, *Si ex falsis instrumentis vel testimoniis judicatum sit.*—*Decisions of February 9, 1865, and October 1, 1866.*

At the present time if the judgment was rendered on false documents or testimony, there lies an appeal for revision, in accordance with article 1794 of the law in force.

Although the final judgments of courts do not generally affect those who have not been parties to the litigation, there are some exceptions, as is the case when the nullity of a will is involved, because after it has been declared null by a court it can not be valid for a third person, even though he should not have been a party to the litigation.—*Decision of March 28, 1859.*

it in its original state as a proof that he has not used the same before the appellate court.

In other cases the abandonment must be made before the appellate court.[1]

ART. 409. In order to consider the abandonment made, it shall be necessary that the solicitor have or present a special power therefor or that the person interested ratifies his action in writing.

When the abandonment is considered as having been made, the costs incurred by the taking of the appeal shall be taxed against the party making it.[2]

TITLE X.

EXTINCTION OF ACTIONS.

ART. 410. All actions shall be considered abandoned and be extinguished by law, even if minors or incapacitated persons are parties thereto, if, after having been instituted, they are not prosecuted—

Within four years when the cause is at first instance.

Within two if it is at second instance.

Within one year if on appeal for annulment of judgment.

These periods of time shall be counted from the time the last notice was served on the parties.[3]

ART. 411. No action shall be extinguished within the periods mentioned in the foregoing article when the want of prosecution was due to *force majeure* or to any other cause independent of the will of the litigants.

In such cases said periods shall be counted from the time the litigants could have begun the prosecution.[4]

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[1] See articles 845 to 848 and 1787.

[2] An order declaring an appeal abandoned is final.—*Decision of December 20, 1862.*

If the appellant does not appear before the appellate court within the time set for his appearance, it is not necessary that the parties be cited to perfect the appeal, because the first time that the respondent requests judgment in default the remedy is declared abandoned.—*Decisions of September 20, 1865, and April 24, 1869.*

An appeal is not considered abandoned until the court so declares.—*Decision of April 6, 1866.*

[3] A declaration of abandonment is not proper when the delay in the proceedings is due to *force majeure*, an exception which favors the litigant whose solicitor discontinues in the exercise of his duties, without notifying the person interested in due form.—*Decision of June 3, 1891.*

The law does not require for these cases the previous citation which is required in rendering judgments or rulings which close an action, because the intention thereof is to officially close the causes.—*Decision of April 29, 1885.*

The extinction of an action is applicable to causes prosecuted according to the old law of procedure, with the only difference with regard to causes suspended upon the promulgation of this law of the provisions of article 419; that is to say, the periods to be counted from the day on which the law went into effect.—*Decision of December 7, 1886.*

[4] The loss of the record roll of the second instance does not constitute a cause of *force majeure* referred to in this article.—*Decision of March 9, 1887.*

ART. 412. It shall be the duty of the clerk or recording clerk in whose possession the record may be, to inform the proper judge or court when the periods fixed in article 410 have elapsed, in order that the proper order may be officially issued.

ART. 413. If the record be at first instance, and it should appear that the four years have elapsed without any of the parties having taken up the prosecution of the action when they were able to do so, the action shall be considered as abandoned, and the judge shall order the record filed in the archives, without further proceedings.

In such case the costs shall be taxed against the parties at whose instance they were incurred.

ART. 414. When the record is at second instance, or on appeal for annulment of judgment, after the respective periods have elapsed, the appeal shall be considered as abandoned, and the judgment appealed from or complained against shall be considered final, the record being ordered returned to the lower judge or court, with a certificate of the ruling containing said decision, for the proper purposes.

In such cases the costs of the appeal shall be taxed against the appellant or petitioner.

ART. 415. The plaintiff, appellant, or petitioner may request a rehearing or review of the rulings referred to in the two foregoing articles within five days, if he should believe that the court has erred in its declaration that the legal period has expired, by virtue of which the action has been considered extinguished, or if the case is included in the provisions of article 411.

The request can not be based on any other reason.

ART. 416. This remedy shall take the course prescribed in articles 377 and 378, the person requesting the rehearing being permitted to present his evidence of the facts upon which his request is based within a period not to exceed ten days.

ART. 417. The provisions contained in the foregoing articles shall not be applicable to proceedings for the execution of final judgments. These proceedings may be instituted at any time before the execution of the judgment, even if the periods mentioned in article 410 have expired.

ART. 418. The extinction of the first instance does not extinguish the cause of action, which may be prosecuted again in the proper action and a new action instituted, if said cause of action should not have become prescribed in accordance with law.[1]

ART. 419. In actions which, upon the promulgation of this law, are

[1] See article 944 of the Code of Commerce with regard to the interruption of the prescription of causes of action arising from commercial contracts, and articles 1946 and 1973 of the Civil Code relating to cases in which an interruption will not be considered, etc.

pending in any instance, the period fixed in article 410 shall be counted from the day on which, after their publication, said law goes into operation.

If said actions are filed, the pending instance shall be considered as legally extinguished without the necessity of a special declaration, unless the prosecution thereof is proceeded with within the period aforementioned.

TITLE XI.

TAXATION OF COSTS.

ART. 420. When there is an adjudication of costs, as soon as it becomes final, payment shall be enforced by compulsory process, after their taxation, if the party adjudged to pay the same should not have done so before the opposite party requests said taxation.[1]

ART. 421. The taxation of costs shall be made in the superior and inferior courts by the clerk of the chamber or recording clerk who may have taken part in the action, including therein all the costs comprised in the adjudication, and incurred up to the time of the taxation.

In the superior or inferior courts having assessors of costs by virtue of an alienable office, and until said offices revert to the State, said assessors shall make the taxation in accordance with the provisions of this law.

ART. 422. Fees appertaining to officials subject to schedules, shall be regulated according thereto.

The fees of attorneys, experts, and other officials not subject to a schedule, shall be fixed by the persons interested in a detailed and signed statement, which they shall personally present at the clerk's

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[1] The costs of the second instance can not be taxed against a litigant who obtained a favorable judgment at first instance, and is forced to appear before the higher court by reason of the appeal taken by the opposite party.—*Decision of April 14, 1882*

The costs can in no case be taxed against the respondent.—*Decision of April 25, 1887.*

The adjudging court is to consider the good or bad faith of the litigants, for the purpose of taxing the costs at first instance.—*Decisions of April 14, 1882, October 25 and December 15, 1883, May 21, 1884, May 20 and December 16, 1885, March 31 and May 22, 1886.*

After the adjudication upon costs, they shall be recovered by compulsory process, without permitting foreign questions to be raised, which must be decided in a separate proceeding.—*Decision of January 17, 1883.*

When the plaintiff is granted part of what he desires, the rest being denied him, he may be adjudged to pay the costs—*Decision of February 13, 1886.*

When the decision of the lower court is affirmed in all its points, the appellant is obliged to pay the costs.—*Decision of September 30, 1886.*

The costs of the second instance can not be imposed in any case upon the respondent who has appeared to support the judgment he obtained in the lower court.—*Decision of April 25, 1887.*

office, without the necessity of a letter of transmittal, or through the solicitor of the party whom they defended, after the judgment or ruling in which said costs were imposed becomes final. The recording clerk shall include in the taxation the amount appearing in the statement.

ART. 423. Fees for instruments, proceedings, or other acts which are useless, superfluous, or not authorized by law, and the items of statements which are not mentioned in detail, or which relate to fees not incurred in the action, shall not be included in the taxation of costs.

Neither shall there be included in said taxation the costs of proceedings or of issues which had been expressly adjudicated against the party who obtained the final judgment, such costs being at all times on account of said party.[1]

ART. 424. After the taxation of costs has been made and presented, no other entry shall be included or added thereto, the person interested reserving the right to demand payment therefor, if he should so desire, of the person and in the manner he may see fit.

ART. 425. The taxation of costs shall be submitted to each of the parties for examination, for a period of three days, the party who has been adjudged to pay the same making the first examination.

ART. 426. If the fees of the attorneys should be objected to as being excessive, the attorney against whom the complaint is directed shall be heard for a period of two days, and the record shall then be transmitted to the association of attorneys, and where there is none, to two attorneys appointed by the judge or chamber, for a report thereon. Should there not be two attorneys at the place where the action was heard, or all of them should be interested in the question, the data shall be transmitted to the nearest association or college of attorneys, through the proper judge of first instance.

The same action shall be taken when fees of experts or other officials not subject to a schedule are objected to; in such case, the report of the academy, college, or guild to which they belong shall be heard, and if there be none, that of two persons of the same profession. Should there not be any in the place, the neighboring places may be resorted to.

ART. 427. The chamber or the judge in a proper case, in view of the statements of the parties or persons interested and the reports received with regard to the fees, shall approve the taxation or shall order the changes made therein which they may consider just and at the cost of the proper party, without further remedy.[2]

ART. 428. When the taxation of costs is objected to, because fees or charges have been included therein, the payment of which does not appertain to the person adjudged to pay the costs, said objection shall be heard and decided according to the procedure and with the remedies prescribed for incidental issues.

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[1] See article 858 of the Organic Law.

[2] After the taxation of costs has been approved there is no further remedy.—*Decision of April 30, 1866.*

TITLE XII.

DISTRIBUTION OF BUSINESS.

ART. 429. All civil matters, whether of contentious or voluntary jurisdiction, shall be distributed among the courts of first instance when there is more than one in the town, and in all cases among the different clerks' offices of each court.

ART. 430. Judges of first instance shall not permit that any matter be proceeded with, unless a memorandum of distribution appears thereon.

In the case said memorandum does not appear, he can not issue any other order but one requiring that the matter be submitted for distribution.

ART. 431. Notwithstanding the provisions contained in the foregoing articles, the first proceedings in cautionary attachments, redemptions,[1] summary proceedings to prevent the construction of a new work or the demolition or strengthening of a construction, building, or tree about to collapse or fall, the custody of persons, and in all other matters which, in the judgment of the judge, are of so peremptory and urgent a character that a delay thereof would give a reasonable motive to fear that irreparable injury would be caused to the persons interested, may be made and carried into effect by any of the judges or clerks of whom the same is requested.

In such cases, as soon as the urgent action has been taken, the matter shall be submitted for distribution without a delay of more than three days.

ART. 432. With the exception of the cases mentioned in the foregoing article, the judges issuing orders in a matter which has not as yet been distributed shall be disciplinarily corrected, according to the provisions of the following title.

ART. 433. Any distributor or clerk of the court who distributes any matter to a court or clerk's office other than the one to which it rightfully belongs, shall incur a fine of not less than 65 nor more than 375 pesetas, without prejudice to the criminal liability which may be proper.

ART. 434. A clerk who acts in a matter subject to distribution without it having been assigned to him, shall incur a fine of double the fees he may have earned thereby.

ART. 435. Verbal actions, actions of unlawful detainer, and other matters over which municipal judges have jurisdiction, are not subject to distribution.

Where there are two or more, each shall take cognizance of those appertaining to his district, in accordance with the rules established

[1] *Retracto:* The right which by law, custom, or agreement a person has to annul a sale and himself take the thing sold to another for the same price.—*Escriche, Diccionario de Legislación y Jurisprudencia.*

ART. 444. The assistants of superior or inferior courts shall also be disciplinarily corrected for the faults which they may commit or the omissions they may incur with regard to their duties in judicial proceedings.

The same provisions shall apply to the subordinate officials of superior or inferior courts, for the offences they may commit in the fulfillment of the judicial mandates entrusted to them.

ART. 445. The punishment of attorneys, solicitors, assistants, and subordinate officials for the offences above mentioned, shall always be imposed by the court or chamber of justice in which are pending the proceedings, in which said penalties were imposed, or where the oral defense is presented in which the former have committed the transgression.

If they shall commit other offences which deserve punishment, it shall be administratively imposed according to the provisions of laws, ordinances, or regulations.

ART. 446. The chambers of justice of the supreme court may disciplinarily correct those of the audiencias and inferior judges for the offences they may have committed in the proceedings of which the former take cognizance, by virtue of appeals for annullment of judgment, or on complaint, or to decide questions of competency.

The civil chambers of audencias shall have the same power with regard to judges of first instance, and the latter over the municipal judges who are subordinate to them, when, by virtue of an appeal or other remedy, they take cognizance of the proceedings in which the offense was committed.

ART. 447. Neither judges nor chambers of justice can disciplinarily correct the officials of the department of public prosecution for offences which they may commit in the judicial proceedings in which they must take part.

In such cases they shall confine themselves to informing their hierarchical superior of the offence committed, in order that he may impose the correction which he may deem proper.

ART. 448. The disciplinary corrections which may be imposed upon the officials mentioned in articles 442 et seq. shall be—

1. Admonition.
2. Warning or advice.
3. Reprehension.
4. A fine not to exceed 250 pesetas when imposed by municipal judges, 500 when imposed by judges of first instance, 750 when imposed by audiencias, and 1,250 when imposed by the supreme court.
5. Partial or total retention of the fees or of the charges pertaining to the instruments or acts in which the offence was committed.
6. Suspension from the exercise of the profession or employment with the deprivation of salary and emoluments, which can not exceed three months, but may be extended to six months if a second offence

be committed. During the suspension the salary and emoluments of the person punished shall belong to the person discharging his duties.

ART. 449. The imposition of the costs upon the aforementioned officials shall also be considered as a disciplinary correction, in the cases in which it is authorized by law.

ART. 450. The disciplinary correction shall be imposed *eo instanti*, in view of what may appear from the record relating to the offence committed, and, in a proper case, from the contents of the instruments or certificate which may have been made by the recording clerk, by order of the presiding judge, at the time the offence was committed, of the acts which are considered to deserve correction as well as of the explanations made by the person interested.

ART. 451. Against an order imposing any of the corrections above mentioned, the party involved may be heard in justification, if he should so request, within the five days following the day he was notified or when he received official notice thereof.

ART. 452. The hearing in justification shall take place in the chamber or court where the correction was imposed, according to the procedure prescribed for issues, and without the necessity of the services of a solicitor or attorney.

If, for the purposes of said hearing, the record showing the imposition of said correction should not be concluded, a separate record shall be prepared containing the statements which the judge or chamber may deem proper.

In municipal courts the matter shall be heard and decided in an oral trial.[1]

ART. 453. These issues shall be heard with the attendance of a representative of the department of public prosecution, and only when the correction consists in the imposition of costs shall the litigants interested therein be parties thereto, if they should request it.

ART. 454. The correction may be affirmed, increased, reduced, or vacated in the decision of these issues.

ART. 455. From the decisions rendered by municipal judges, the only appeal shall be to the judge of first instance of the judicial district.

From the decisions rendered by the latter in first instance, the only appeal shall be to the civil chamber of the proper audiencia.

Against those rendered by chambers of justice of audiencias or of the supreme court, there shall be no remedy whatsoever.

ART. 456. The department of public prosecution shall see that the provisions of this law are duly complied with, for which purpose, in causes and other judicial matters in which it takes part, if any offence

[1]The administrative proceedings instituted for the imposition of disciplinary corrections upon officials of the judiciary or upon their assistants, shall be drafted on official paper in accordance with article 43 of the law, without prejudice to reimbursement in a proper case, in accordance with article 49 of the same.—*Royal order of December 24, 1884.*

is noted which should be corrected, the public prosecutor shall recommend what he may deem proper to the judge or court.

ART. 457. The department of public prosecution shall be informed of any disciplinary correction imposed upon officials of the judiciary (excepting that mentioned in subdivision 1 of article 448) as soon as the decision is final, attaching thereto a certified copy of the same drafted on official stamped paper.

Those imposed upon assistants of superior or inferior courts shall be entered in a register, which shall be kept in the office of the secretary of the same.

Those imposed upon attorneys or solicitors shall be communicated to the dean of the college or association to which they belong for the proper record and other purposes. Where these corporations do not exist they shall be entered in the register of the superior or inferior court.

ART. 458. The provisions of this title shall be understood without prejudice to other prescriptions of this law, for the special cases to which they refer.

BOOK II.

CONTENTIOUS JURISDICTION.

TITLE I.

PROCEEDINGS TO AVOID LITIGATION.

ART. 459. Before instituting a declaratory action[1] a conciliation must be attempted before the competent municipal judge.

The following are excepted:

1. Oral actions.

2. Declaratory actions which are brought as an issue or consequence of another action, or proceedings of voluntary jurisdiction.

3. Actions in which the public treasury, municipalities, charitable institutions, and, in general, civil corporations of a public character, are plaintiffs or defendants.

4. Actions in which minors or incapacitated persons are interested, for the free administration of their property.

5. Actions brought against unknown or uncertain persons, or against absentees who have no known residence, or who reside outside of the territory of the court before which the action is to be brought.

In the last case, if the litigants should reside in the same town, a conciliation must be attempted.

6. Declaratory actions instituted to annul or to demand the fulfillment of agreements made in proceedings to secure a conciliation.

7. Actions against the civil liability of judges and associate justices.

8. Actions before arbitrators and friendly compromisers, proceedings to secure the settlement of estates, executory actions, actions of unlawful detainer, summary proceedings relating to property, and for temporary maintenance.[2]

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[1] See note to article 155.

[2] With regard to actions brought against the State, and against public corporations, although proceedings to secure a conciliation are not required, there must be stated in a certificate, authenticated in due form, that the administrative remedies and other means to reach an agreement have been used, as prescribed by royal order of June 9, 1847; the law of February 20, 1850; royal decree of September 20, 1851; article 173 of the instructions of May 31, 1855; the decree laws of July 9, 1869, and August 26, 1874; and the royal orders of January 11, 1877, and March 23, 1886.

Nevertheless, the absence of administrative proceedings, a requisite similar to the proceedings to secure a conciliation, is not a motive to raise questions of competency on the part of the administrative authorities, but a cause for annulment which

ART. 460. Proceedings to secure a conciliation shall not be necessary for the interposition of actions of *tanteo* or *retracto* (redemption),[1] or any other action which is urgent and peremptory in its nature. But if litigation is to be resorted to, the proceedings to secure a conciliation shall be required or a certificate to the effect that a conciliation was attempted without effect.

ART. 461. The judge shall not admit a complaint not accompanied by a certificate of the proceedings to effect a conciliation, or that one was attempted without result, in cases in which it is required by law.

Nevertheless, proceedings had without this requisite shall be valid and proper, reserving the liability which the judge may have incurred; but said proceedings to secure a conciliation shall take place at any stage of the action in which the absence thereof is noted.[2]

ART. 462. The municipal judges of the domicile, and, in their absence, those of the residence of the defendant, shall be the only ones competent in proceedings to effect a conciliation instituted before them, in cases in which, according to law, they must be held.

In towns having more than one municipal judge, the one of the district of the place of residence of the defendant shall be of competent jurisdiction.[3]

ART. 463. If a question is raised as to the competency of the municipal judge before whom the proceedings to avoid litigation are instituted, or if said judge is challenged, the appearance of the parties shall be considered as an attempt to secure a conciliation, without

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must be considered by the court taking cognizance of the cause.—*Decision of the Council of State of February 9 and May 13, 1864, and others.* At the present time the absence of an administrative claim before the judicial proceedings, constitutes the dilatory exception of number 7, article 532 of this law.

The fact of proceedings to secure a conciliation not having been attempted does not constitute a basis to take an appeal for annulment of judgment.—*Decision of April 3, 1865.*

A person not taking part in proceedings to effect a conciliation is not bound thereby and may demand its annulment.—*Decision of July 1, 1870.*

With regard to these proceedings in suits for divorce, see the decree of November 23, 1872, and of the regency of February 9, 1875.

[1] *Tanteo y retracto:* The right which certain persons have to acquire for themselves a thing purchased by another, rescinding the sale already made. The fundamental basis of the *retracto* is, like the *tanteo*, the right to acquire, in preference to a third person, a thing sold or given in payment to another; but in the *tanteo* this right of preference must be exercised before the consummation of the contract, while by means of the *retracto*, the assignment of the estate made to the purchaser is annulled, and the person in whose favor this is effected is substituted for the purchaser or assignee. Thus the *tanteo* takes place before the sale, and the *retracto* after it has been consummated.

[2] If a complaint is made without a certificate to the effect that a conciliation was attempted, this lack alone produces the effects of this article.—*Decision of April 17, 1868.*

[3] This article is applicable exclusively to proceedings to secure a conciliation.—*Decision of June 3, 1869.*

further proceedings, and the plaintiff may institute the proper action showing a certificate to this effect.

ART. 464. For the purposes of the proceedings to effect a conciliation, the party in interest shall appear before the municipal judge and present as many copies of the complaint signed by him, or by a witness, at his request, should he not be able to sign, as there may be defendants, and one more, in which shall be stated:

The names, profession, and domicile of the plaintiff and defendant.

The cause of action.

And the date on which said complaint is presented to the court.

ART. 465. The municipal judge shall, on the day the complaint is filed, or on the next working day, cite the parties to appear on a day and hour designated by him, within the shortest period of time possible.

Twenty-four hours at least must intervene between the summons and the appearance, which period may, nevertheless, be reduced by the judge if there be good cause therefor.

In no case can the period exceed eight days from the date of the presentation of the complaint.[1]

ART. 466. The secretary of the court, or the person whom the latter may designate, shall serve the summons upon the defendant or defendants, in accordance with the provisions of articles 262 and 263 of this law relating to notifications of all kinds; but instead of the copy of the order, one of the copies of the complaint presented by the plaintiff shall be delivered to him, upon which the secretary shall make a memorandum of the name of the municipal judge ordering the summons, and of the day, hour, and place for the appearance. Upon the original complaint, which shall afterwards be filed in the archives, the person summoned shall sign a receipt for the copy, or a witness shall do so at his request, if he is unable to sign.

ART. 467. Persons absent from the place where said conciliation is requested, shall be summoned by means of a communication addressed to the municipal judge of the place where they are residing.

A copy or copies of the complaint shall be attached to the communication to be delivered to the defendant.

The municipal judge of the place of residence of the defendants shall see, under his liability, that the citation is made in the manner prescribed in the foregoing articles, on the first working day after the day of the receipt of said communication, and he shall return the same, duly endorsed, on the same day of the summons, or the next day at the latest. This communication shall be filed in the archives with the copies of the complaints mentioned in the foregoing article.

ART. 468. The plaintiffs and the defendants are obliged to appear on

[1] An extension for the purpose of answering the complaint can not be granted in these proceedings.—*Decision of January 14, 1869.*

the day and hour fixed. If any of them should not appear, and should not show good cause for not attending, the proceedings to secure a conciliation shall be considered as attempted without result, the costs being taxed against the person in default.

ART. 469. The plaintiffs as well as the defendants shall appear accompanied by an *hombre bueno*.[1]

Hombres buenos in proceedings for conciliation must be Spaniards who are in the full enjoyment of all their civil rights.

ART. 470. The proceedings to secure a conciliation shall be held in the following manner:

The plaintiff shall commence by stating his claims and indicating the grounds upon which the same are founded.

The defendant shall answer whatever he may consider proper, and may also exhibit any document upon which he bases his exceptions.

After the answer, the persons interested may reply and rejoin, if they so desire.

If there should be no agreement, the *hombres buenos* and the municipal judge shall attempt to secure an agreement. If they should be unsuccessful the proceedings shall be considered as closed.

ART. 471. A succinct record of the proceedings to secure a conciliation shall be drafted in a book which shall be kept by the secretary of the court. This record shall be signed by all the persons present, and by a witness for those who should not be able to sign, at their request.

ART. 472. In the book referred to in the foregoing article a memorandum shall be made, signed by the municipal judge and by the parties present, to the effect that the proceedings to secure a conciliation had been held, at which the defendants did not appear, if such be the case.

If there are several defendants, some of whom appear, the proceedings to secure a conciliation shall be proceeded with, and shall be considered as attempted without success with regard to the other defendants.

ART. 473. A certified copy of the minutes of the proceedings to secure a conciliation shall be given to the person or persons requesting the same, or of the failure thereof, or that an effort was made to secure a conciliation, which failed because one or more of the defendants did not appear.

ART. 474. The costs incurred in the proceedings to secure a conciliation shall be taxed against the person instituting the same, and the costs of the certificates shall be paid by the persons requesting them.

ART. 475. The agreement reached by the parties at a proceeding to

[1] See note to article 11.

secure a conciliation shall be enforced by the same municipal judge, according to the procedure prescribed for the execution of judgments rendered in verbal actions, when the interest involved does not exceed 1,000 pesetas.

Whenever the amount involved exceeds the sum above mentioned it shall have the validity and force of an agreement contained in a formal and public instrument.

ART. 476. An action for annulment of the agreement entered into at proceedings to secure a conciliation may be brought for the causes which invalidate contracts.

The complaint in said action must be presented to the judge of first instance of the judicial district within the eight days following the proceedings to secure a conciliation, and it shall be heard and determined according to the procedure prescribed for declaratory actions, based upon their import.

If the amount involved should not exceed 1,000 pesetas, the action shall also be heard before the judge of first instance, according to the procedure prescribed for oral actions, and without further remedy.[1]

ART. 477. If the ordinary action is not instituted within two years following the proceedings to secure a conciliation, the latter proceedings shall not produce any effect whatsoever, and new proceedings must be held before instituting the action.

ART. 478. Neither shall the prescription be interrupted if the proper action be not instituted within the two months following the unsuccessful proceedings to secure a conciliation.[2]

ART. 479. The municipal judges shall forward to those of first instance of their respective districts semiannual statements of the proceedings to avoid litigation held before them, in order that they may be filed in the said courts of first instance.

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[1] This article has not prohibited the exercise of the actions which may be legally brought, for other reasons, when not against the agreement entered into.—*Decision of January 4, 1866.*

Orders issued for the enforcement of the agreement entered into in proceedings to secure a conciliation, can not be appealed from for annulment.—*Decision of September 28, 1866.*

The period of eight days refers only to the agreement entered into if the proceedings to secure a conciliation are valid, and not to the vices which invalidate said proceedings.—*Decision of January 11, 1883.*

After the order issued for the enforcement of an agreement entered into at proceedings to secure a conciliation has been executed, the only remedies against the same shall be those granted by law against final judgment.—*Decision of November 11, 1881.*

[2] The proceedings to avoid litigation produce the interruption of the prescription of ownership and other property rights, "provided that within two months after the celebration thereof a complaint as to the possession or ownership of the thing contested be presented to the judge."—*Civil Code, Art. 1947.*

principal the former shall be added to the amount of the credit in order to determine the amount involved.

The amount of the profits shall be deemed true and exact if the plaintiff shall state in his complaint the annual import of the same and the time during which they have remained unpaid.

If the amount of the interest or profits due is not true and exact, it shall be ignored, and the principal only shall be taken into consideration.

9. The provisions of the foregoing rule are applicable to the case in which damages are claimed together with the principal amount.

10. For the purpose of determining the amount of the claim, only the interest and profits due and unpaid shall be taken into consideration, and not those to fall due later.

ART. 489. The amount involved in every action shall be precisely determined according to the rules established in the foregoing article, and when it cannot be determined by the same, the class of action in which the matter is to be heard shall be determined in the complaint itself.

ART. 490. The judge of first instance shall proceed with the action in accordance with the procedure prayed for by the plaintiff, unless he considers himself incompetent on account of the amount involved, in which case he shall render a decision to that effect, notifying the plaintiff to allege his rights before the competent judge.

This ruling may be appealed from for a review and stay of proceedings.

ART. 491. In actions of greater and lesser import, when the defendant does not agree to the value given to the thing in litigation, or to the character of the action instituted by the plaintiff, he shall so state to the court in writing within the first four days of the period allowed to answer the complaint, presenting, in a proper case, the documents on which he bases his contention.

Said period of four days cannot be extended.

ART. 492. After said written statement has been presented to the court, the judge shall cite the parties to appear, fixing a day and hour therefor within the six days following, in order that the parties may come to an agreement with regard to the class of action to be adopted.

If they should not come to an agreement and the difference should consist in the nonexistence of the data referred to in the rules of article 488, and each party should place a different value on the amount involved in the complaint, they shall at the said hearing appoint an expert to appraise the same, or each party shall select one, and the judge a third one, for the purpose of settling any differences which may arise between the other two.

The result arrived at, at the appearance, which may be attended, in a proper case, by the attorneys of the parties, shall be succinctly recorded, and the statement shall be signed by the persons attending and by the judge and the clerk.

ART. 493. When the parties do not come to an agreement with regard to the class of action to be adopted, the judge, within the two days following that of the appearance, or after the decision of the experts, in a proper case, shall make such ruling thereupon as he may consider proper.

ART. 494. There shall be no remedy whatsoever against a ruling declaring that an action of greater import is proper.

An appeal for annulment of judgment only shall lie against a ruling declaring that an action of lesser import is proper.

This appeal must be taken at the same time as an appeal from the final judgment, but it shall be necessary to prepare the same within the three days following the notice of the ruling, by stating the intention of taking said appeal for annulment at the proper time.

If it should be declared that an oral action before the competent municipal judge is the proper action, an appeal for a stay and review of the proceedings lies from the ruling.

ART. 495. If there should be doubt as to the amount in litigation in oral actions, the question shall be decided by the municipal judge after hearing the parties at the time of the appearance for trial.

No appeal shall lie from the decision of said judge sustaining his jurisdiction, but if an appeal be taken from the final judgment, the judge of first instance may annul the proceedings, if it should appear that the amount involved is greater than 1,000 pesetas.

An appeal for a review and stay of proceedings shall lie to the judge of first instance of the district from a ruling of a municipal judge, declaring that the amount or matter in litigation does not come within his jurisdiction.

SECTION II.—*Preparatory proceedings.*

ART. 496. Every action may be prepared:

1. By a demand made by the party who proposes to bring an action upon the party whom he intends to sue, for a sworn declaration with regard to some fact relating to the personality of the latter, and without information of which the action cannot be brought.

2. By demanding the exhibition of the personal property, which, in a proper case, is to be the object of the real or mixed action which he intends to institute against the person who has the same in his possession.

3. By the person who believes himself to be an heir, coheir, or legatee, to exhibit the will, codicil, or testamentary memorandum of the testator.

4. By the buyer demanding of the seller, or the seller of the buyer, in case of eviction, the exhibition of the title deeds or other instruments having reference to the thing sold.

the day and hour fixed. If any of them should not appear, and should not show good cause for not attending, the proceedings to secure a conciliation shall be considered as attempted without result, the costs being taxed against the person in default.

ART. 469. The plaintiffs as well as the defendants shall appear accompanied by an *hombre bueno*.[1]

Hombres buenos in proceedings for conciliation must be Spaniards who are in the full enjoyment of all their civil rights.

ART. 470. The proceedings to secure a conciliation shall be held in the following manner:

The plaintiff shall commence by stating his claims and indicating the grounds upon which the same are founded.

The defendant shall answer whatever he may consider proper, and may also exhibit any document upon which he bases his exceptions.

After the answer, the persons interested may reply and rejoin, if they so desire.

If there should be no agreement, the *hombres buenos* and the municipal judge shall attempt to secure an agreement. If they should be unsuccessful the proceedings shall be considered as closed.

ART. 471. A succinct record of the proceedings to secure a conciliation shall be drafted in a book which shall be kept by the secretary of the court. This record shall be signed by all the persons present, and by a witness for those who should not be able to sign, at their request.

ART. 472. In the book referred to in the foregoing article a memorandum shall be made, signed by the municipal judge and by the parties present, to the effect that the proceedings to secure a conciliation had been held, at which the defendants did not appear, if such be the case.

If there are several defendants, some of whom appear, the proceedings to secure a conciliation shall be proceeded with, and shall be considered as attempted without success with regard to the other defendants.

ART. 473. A certified copy of the minutes of the proceedings to secure a conciliation shall be given to the person or persons requesting the same, or of the failure thereof, or that an effort was made to secure a conciliation, which failed because one or more of the defendants did not appear.

ART. 474. The costs incurred in the proceedings to secure a conciliation shall be taxed against the person instituting the same, and the costs of the certificates shall be paid by the persons requesting them.

ART. 475. The agreement reached by the parties at a proceeding to

[1] See note to article 11.

secure a conciliation shall be enforced by the same municipal judge, according to the procedure prescribed for the execution of judgments rendered in verbal actions, when the interest involved does not exceed 1,000 pesetas.

Whenever the amount involved exceeds the sum above mentioned it shall have the validity and force of an agreement contained in a formal and public instrument.

ART. 476. An action for annulment of the agreement entered into at proceedings to secure a conciliation may be brought for the causes which invalidate contracts.

The complaint in said action must be presented to the judge of first instance of the judicial district within the eight days following the proceedings to secure a conciliation, and it shall be heard and determined according to the procedure prescribed for declaratory actions, based upon their import.

If the amount involved should not exceed 1,000 pesetas, the action shall also be heard before the judge of first instance, according to the procedure prescribed for oral actions, and without further remedy.[1]

ART. 477. If the ordinary action is not instituted within two years following the proceedings to secure a conciliation, the latter proceedings shall not produce any effect whatsoever, and new proceedings must be held before instituting the action.

ART. 478. Neither shall the prescription be interrupted if the proper action be not instituted within the two months following the unsuccessful proceedings to secure a conciliation.[2]

ART. 479. The municipal judges shall forward to those of first instance of their respective districts semiannual statements of the proceedings to avoid litigation held before them, in order that they may be filed in the said courts of first instance.

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[1] This article has not prohibited the exercise of the actions which may be legally brought, for other reasons, when not against the agreement entered into.—*Decision of January 4, 1866.*

Orders issued for the enforcement of the agreement entered into in proceedings to secure a conciliation, can not be appealed from for annulment.—*Decision of September 28, 1866.*

The period of eight days refers only to the agreement entered into if the proceedings to secure a conciliation are valid, and not to the vices which invalidate said proceedings.—*Decision of January 11, 1883.*

After the order issued for the enforcement of an agreement entered into at proceedings to secure a conciliation has been executed, the only remedies against the same shall be those granted by law against final judgment.—*Decision of November 11, 1881.*

[2] The proceedings to avoid litigation produce the interruption of the prescription of ownership and other property rights, "provided that within two months after the celebration thereof a complaint as to the possession or ownership of the thing contested be presented to the judge."—*Civil Code, Art. 1947.*

TITLE II.

DECLARATORY ACTIONS.[1]

ART. 480. All contentions at law between parties for which no special proceedings are prescribed in this law shall be heard and decided in the proper ordinary declaratory action.

ART. 481. Actions of this kind are:

1. Declaratory actions of greater import.
2. The same of lesser import.
3. Oral actions.

CHAPTER I.—PROVISIONS COMMON TO DECLARATORY ACTIONS.

SECTION I.—*Rules to determine the proper action.*

ART. 482. The following shall be decided in declaratory actions of greater import:

1. Causes of action in which the amount involved exceeds 5,000 pesetas.[2]

2. Causes of action in which the amount involved can not be estimated, or can not be determined according to the rules established in article 488.

3. Those relating to political or honorary rights, personal exemptions and privileges, filiations, paternity, interdiction, and others involving the civil status and conditon of persons.

ART. 483. Ordinary causes of action in which the amount involved is more than 1,000 pesetas and does not exceed 5,000 pesetas, shall be decided in an action of lesser import.[3]

ART. 484. The provisions of the two foregoing articles shall be understood without prejudice to the provisions relating to executory actions.

ART. 485. All questions between parties in which the amount involved does not exceed 1,000 pesetas, shall be decided in an oral action.

ART. 486. All causes of action between parties, whether before or after the commencement of an action, and at any stage thereof, may be submitted for decision to arbitrators or friendly compromisers with the consent of all the persons interested, if they have the legal capacity necessary to give said consent.

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[1] *Juicio declarativo*: That involving doubtful and controverted rights which must be judicially decided.—*Escriche, Diccionario razonado de legislación y jurisprudencia.*

[2] According to the law of procedure of Spain (to which the note to article 155 refers), the action of greater import is that involving an amount of more than 3,000 pesetas, while in the Philippines it is the action in which the amount involved exceeds 2,500 pesetas. The amount for Spain was changed by the law of May 11, 1888.

[3] For Spain this amount is between 250 and 3,000 pesetas, and for the Philippines between 500 and 2,500 pesetas.

The following are excepted from this rule, and can not therefore be submitted to the decision of arbitrators or of friendly compromisers:

1. The causes of action referred to in number 3 of article 482.[1]

2. Questions in which, according to law, the intervention of the department of public prosecution is necessary.

ART. 487. Complaints in intervention, and all other complaints which are incidental to or a consequence of another action and which must be heard in the ordinary manner, must be heard and determined according to the proceedings established for the proper declaratory actions according to the matter or amount in litigation.

If the amount involved should not exceed 1,000 pesetas, and the complaint were incidental to an action of which a judge of first instance is taking cognizance, the latter shall decide the same in an oral action, without further remedy.

ART. 488. The amounts involved in the causes, for the purpose of determining thereby the kind of declaratory action to be instituted, shall be determined according to the following rules:

1. In petitory actions relating to the right to demand perpetual annual prestations, the amount involved shall be determined by one annual payment multiplied by 25.

2. If the prestation be for life, the annual payment shall be multiplied by 10.

3. In obligations payable at different times, the amount involved shall be determined by the amount of the entire obligation, when the action involves the validity of the obligation in its entirety.

4. When several credits belong to several persons interested and arise out of one and the same title against a common debtor, if each creditor, or two or more creditors, institute separate actions for the payment of what is due them, the amount involved, for the purposes of determining the character of the action, shall be the amount claimed.

5. In actions relating to easements, the amount thereof shall be calculated by the amount paid for said easements, if it should appear.

6. In real or mixed actions the amount involved shall be the value of the real estate or thing in litigation, according to the consideration appearing in the last instrument by which said property was alienated.

When the action involves, in addition to the property, the profits or rents which may have accrued therefrom, the latter shall be added to the value of said property.

7. In actions involving several credits against the same debtor, the amount involved shall be determined by the total amount of all the credits.

8. In actions relating to the payment of credits together with interest or profits, if the interest due and unpaid should be claimed with the

[1] See articles 1814 and 1820 of the Civil Code.

principal the former shall be added to the amount of the credit in order to determine the amount involved.

The amount of the profits shall be deemed true and exact if the plaintiff shall state in his complaint the annual import of the same and the time during which they have remained unpaid.

If the amount of the interest or profits due is not true and exact, it shall be ignored, and the principal only shall be taken into consideration.

9. The provisions of the foregoing rule are applicable to the case in which damages are claimed together with the principal amount.

10. For the purpose of determining the amount of the claim, only the interest and profits due and unpaid shall be taken into consideration, and not those to fall due later.

ART. 489. The amount involved in every action shall be precisely determined according to the rules established in the foregoing article, and when it cannot be determined by the same, the class of action in which the matter is to be heard shall be determined in the complaint itself.

ART. 490. The judge of first instance shall proceed with the action in accordance with the procedure prayed for by the plaintiff, unless he considers himself incompetent on account of the amount involved, in which case he shall render a decision to that effect, notifying the plaintiff to allege his rights before the competent judge.

This ruling may be appealed from for a review and stay of proceedings.

ART. 491. In actions of greater and lesser import, when the defendant does not agree to the value given to the thing in litigation, or to the character of the action instituted by the plaintiff, he shall so state to the court in writing within the first four days of the period allowed to answer the complaint, presenting, in a proper case, the documents on which he bases his contention.

Said period of four days cannot be extended.

ART. 492. After said written statement has been presented to the court, the judge shall cite the parties to appear, fixing a day and hour therefor within the six days following, in order that the parties may come to an agreement with regard to the class of action to be adopted.

If they should not come to an agreement and the difference should consist in the nonexistence of the data referred to in the rules of article 488, and each party should place a different value on the amount involved in the complaint, they shall at the said hearing appoint an expert to appraise the same, or each party shall select one, and the judge a third one, for the purpose of settling any differences which may arise between the other two.

The result arrived at, at the appearance, which may be attended, in a proper case, by the attorneys of the parties, shall be succinctly recorded, and the statement shall be signed by the persons attending and by the judge and the clerk.

ART. 493. When the parties do not come to an agreement with regard to the class of action to be adopted, the judge, within the two days following that of the appearance, or after the decision of the experts, in a proper case, shall make such ruling thereupon as he may consider proper.

ART. 494. There shall be no remedy whatsoever against a ruling declaring that an action of greater import is proper.

An appeal for annulment of judgment only shall lie against a ruling declaring that an action of lesser import is proper.

This appeal must be taken at the same time as an appeal from the final judgment, but it shall be necessary to prepare the same within the three days following the notice of the ruling, by stating the intention of taking said appeal for annulment at the proper time.

If it should be declared that an oral action before the competent municipal judge is the proper action, an appeal for a stay and review of the proceedings lies from the ruling.

ART. 495. If there should be doubt as to the amount in litigation in oral actions, the question shall be decided by the municipal judge after hearing the parties at the time of the appearance for trial.

No appeal shall lie from the decision of said judge sustaining his jurisdiction, but if an appeal be taken from the final judgment, the judge of first instance may annul the proceedings, if it should appear that the amount involved is greater than 1,000 pesetas.

An appeal for a review and stay of proceedings shall lie to the judge of first instance of the district from a ruling of a municipal judge, declaring that the amount or matter in litigation does not come within his jurisdiction.

SECTION II.—*Preparatory proceedings.*

ART. 496. Every action may be prepared:

1. By a demand made by the party who proposes to bring an action upon the party whom he intends to sue, for a sworn declaration with regard to some fact relating to the personality of the latter, and without information of which the action cannot be brought.

2. By demanding the exhibition of the personal property, which, in a proper case, is to be the object of the real or mixed action which he intends to institute against the person who has the same in his possession.

3. By the person who believes himself to be an heir, coheir, or legatee, to exhibit the will, codicil, or testamentary memorandum of the testator.

4. By the buyer demanding of the seller, or the seller of the buyer, in case of eviction, the exhibition of the title deeds or other instruments having reference to the thing sold.

5. By a partner or member of an association demanding the presentation of the documents and accounts of the company or association, of a copartner or coowner, who may have the same in his possession, in cases in which it may be proper according to law.

The judge shall grant the request in any of these cases, if he should deem the cause on which it is based a good one. If not included in the foregoing cases, the judge shall deny the same *ex-officio*.

An order of the judge denying said request may be appealed from for a review and for a stay of proceedings.[1]

ART. 497. In the first case of the foregoing article, the procedure prescribed for confession in court shall be followed, until a declaration of confession is obtained, in a proper case.

ART. 498. In the second case of article 496, if the personal property being exhibited, the plaintiff should state that it is the property which is the object of the action, the clerk shall enter a description thereof in the record and it shall be left in the possession of the person exhibiting the same, ordering him to preserve it in the same condition until the termination of the action.

The deposit of said personal property may also be ordered at the instance of the plaintiff, if the requisites of article 1398 necessary for the ordering of a cautionary attachment, are attendant. This deposit shall be for the account and at the risk of the person requesting it, and if he should not institute his action within the thirty days following, the attachment shall be dissolved *de jure*, an indemnification for the damages caused thereby being made.

The admonition ordered in the first paragraph of this article shall also remain without effect, if the action is not instituted within said period.

ART. 499. In the third case of article 496, if the party shall designate, at the time the request is made, the protocol or archives in which the original document is filed, he shall not be required to exhibit the document.

ART. 500. He who shall refuse, without just cause, to make the exhibition referred to in cases 2, 3, 4, and 5, of article 496, shall be liable for the losses and damages which may be caused to the plaintiff, who may claim the same in the main action.

If the party required to make such exhibition objects thereto, his objection shall be heard and decided according to the procedure established for issues.

ART. 501. With the exception of the cases mentioned in article 496, the person seeking to institute an action can not request a declaration

[1] The law of civil procedure is not violated when a request being made for the exhibition of title deeds by virtue of which another possesses an estate is definitely denied, because the cause for the request does not appear good in the judgment of the court.—*Decision of April 30, 1870.*

under oath from the opposite party, or from witnesses, or for any other evidence, except when the advanced age of some witness, the imminent danger of his life, his near departure to a point where communication is difficult or slow, or for other good reasons, said party is in danger of losing his rights for lack of evidence; in which case he may request, and the judge may order, that the witness or witnesses who may be under the circumstances referred to, be examined in the manner prescribed in the proper articles of this law.

These proceedings shall be attached to the record as soon as the action shall have been instituted.

SECTION III.—*Presentation of documents.*[1]

ART. 502. The following must necessarily be attached to every complaint or answer:

1. The power of attorney by which the solicitor is empowered to act, whenever he intervenes.

2. The instrument or instruments showing the representative capacity of the party, if he appears as the legal representative of some person or corporation, or if the right he claims is based upon one conveyed to him by another by inheritance or otherwise.

3. The certificate of the proceedings to effect a compromise (*acto de conciliación*) or to the effect that proceedings to avoid litigation were attempted in vain, in the cases in which they are an indispensable requisite before instituting an action.[2]

ART. 503. Every complaint or answer must also be accompanied by the document or documents upon which the party interested bases his right.

If said documents are not at his disposal, he shall indicate the protocol or archives in which the originals are filed.

It shall be understood that the plaintiff has the documents at his disposal, and they must be attached to the complaint, whenever the

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[1] With regard to the formalities to be observed in documents, see article 396 of the mortgage law, and article 152 of the regulations of September 25, 1892, relating to the tax on property rights.

[2] See art. 461 of this law.

This article is violated when the use of waters and an easement being involved and the ownership having been acknowledged by the opposite party, the plaintiff is demanded to prove the same.—*Decision of November 29, 1888; decision of February 8, 1888.*

Administrators and agents must attach to the complaint the instrument evidencing the capacity in which they appear in the action.

A dilatory exception for lack of personality may be taken against a plaintiff who claims a right transferred to him, without proving the assignment by an instrument attached to the complaint.—*Decision of May 21, 1879.* But the personality exists from the time of the presentation of the instrument transferring the right, a proof as to the validity of this right not being required.—*Decision of June 4, 1879.*

originals are filed in a protocol or public archives from which he may demand and obtain authenticated copies of the same.

ART. 504. The presentation of the documents referred to in the foregoing article, when they are public, may be made by means of a simple copy, if the person interested declares that he has no other authentic copies; but said copy shall not produce any effect whatsoever, if, during the period designated for taking evidence, he does not obtain and include in the record a copy of the document having the requisites necessary in order to be admitted as evidence.

ART. 505. After the filing of the complaint and answer, neither the plaintiff nor the defendant shall be permitted to file any other documents but those mentioned in the following cases:

1. Documents bearing a date later than the date of said pleadings.
2. Documents bearing a date prior thereto, when the party presenting the same states on oath that he had no prior knowledge thereof.
3. Documents which could not be procured before for reasons for which the party interested can not be blamed, provided that the designation mentioned in the second paragraph of article 503 has been made at the proper time.[1]

ART. 506. No document whatsoever shall be admitted after the citation for judgment. The judge shall, on his own motion, reject those which may be presented, ordering them to be returned to the party without further remedy.

This shall be understood without prejudice to the authority which, in furtherance of justice, is vested in judges and courts by article 340.

ART. 507. Every document presented after the expiration of the period fixed for the taking of evidence, shall be referred to the opposite party, in order that, within the period of six days, which can not be extended, he may state whether he acknowledges the document as genuine, efficacious, and admissible, or the reasons he may have for objecting thereto.

This statement shall be made in a supplementary prayer (*otrosi*) in the concluding pleadings, when the condition of the record permits it.

For the purpose of making such reference only, the original document shall be delivered to the opposite party or parties in cases in which no copy is attached on account of the document being composed

[1] The violation of this article can not serve as a basis for an appeal for annulment of judgment.—*Decision of October 10, 1882.*

When the plaintiff designates the place where the documents which must be attached to the complaint may be found, and, before answer is made, succeeds in attaching the same to the records, said complaint can not be rejected on account of a breach of law in the manner of presenting the same.—*Decision of May 14, 1884.*

No essential form of procedure was violated in rejecting a document which the plaintiff had requested be included in the record, believing that this should be done because it bore a date later than that of the complaint and answer, without considering that it related to occurrences of a prior date.—*Decision of March 22, 1888.*

of more than twenty-five pages. If there are as many copies as there are opposite parties, the period of time for such reference shall be common and simultaneous for all.

ART. 508. A party who allows the six days to elapse without disputing the correctness of said document, shall be considered to have acknowledged the efficacy thereof in the action.

ART. 509. Within the three days following the delivery of the copy of the objections made to the document, the party who shall have presented the document may briefly answer, setting forth what he may deem proper.

After said period has elapsed no instrument whatsoever shall be admitted on this point.

ART. 510. When the document is a public one and the authenticity thereof is denied, or any of the parties should be in doubt as to the correctness of the copy, it shall be compared with the original, with a citation of the opposite parties, in the manner prescribed in article 598.

In such case, if the certified copy or the transcript should not contain the entire document referred to, such particulars as the parties may designate at the time of the comparison shall be added.

ART. 511. If the document were a private one, it shall be considered valid and efficient when the party whom it prejudices acknowledges it as genuine.

Such acknowledgment shall be considered as made if it be not expressly objected to, or six days are allowed to pass without the document being disputed.

If the said party does not acknowledge the signature, or disputes the genuineness of the document, the comparison prescribed in articles 605 et seq. shall be made.

ART. 512. When the objection refers to the admission of the document by reason of its not being included in any of the cases mentioned in article 505, the judge shall reserve his decision until final judgment is rendered.

ART. 513. In case that one of the parties should contend that a document which may have a well-known influence in the action is false, and institutes a criminal action for the discovery of the crime and of its author, the action shall be suspended until after a final sentence is rendered in the criminal action.

Said suspension shall be decreed as soon as the party interested shows that the complaint in the criminal action has been admitted.[1]

There shall be no remedy whatsoever against this order.

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[1] It is not sufficient to indicate suspicions as to the falsity, but it is necessary to make an accusation, as litigants may do according to this article.—*Decisions of January 20, 1866, and June 9, 1868.*

After a party has presented a document in an action he has no right subsequently to deny its authenticity on account of mere suspicion, because a document can not

SECTION IV.—*Copies of instruments and documents and their purposes.*

ART. 514. Every instrument presented in a declaratory action shall be accompanied by as many true copies thereof, on ordinary paper, as there are other litigants, which copies shall be signed by the solicitor, or in a proper case by the party, being responsible for the correctness thereof.

For this purpose parties bringing the action in common and represented by the same counsel shall be considered as a single party.

The instruments mentioned in number 4 of article 10 are excepted from said prescription.

ART. 515. In the same manner there shall be accompanied as many copies of every document presented as there are other litigants.

If any document is composed of more than 25 sheets, the presentation of copies thereof shall not be obligatory, but they shall be admitted if presented.

ART. 516. The copies of the instruments or documents shall be delivered to the opposite party or parties upon being notified of the order made with regard to the respective instrument, or when the proper citation or summons is served upon them.

ART. 517. The omission of the copies shall not be a ground for the nonadmission of the documents and instruments which are presented at the proper time. In such case the judge shall fix, without further remedy, the unextendible period which, taking into consideration the length of the instrument and documents, he may consider necessary to make the copies; and if they should not be presented within said period, the clerk shall make the same at the expense of the solicitor or of the party, if no solicitor took part.

From these provisions are excepted the complaints, which shall not be admitted when not accompanied by the copies thereof and the documents prescribed.

ART. 518. The original record shall in all cases be preserved in the clerk's office, where it may be examined by the parties or their counsel during office hours, whenever they wish to do so, without the clerk charging any fees for the exhibition thereof.

The original papers shall be delivered or referred to the parties only in the cases expressly prescribed by law.

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be classified as false without the previous declaration required by law 11, Title III, partida 3, or which said party could obtain by making use of the right granted by the law of civil procedure.—*Decision of October 2, 1866.*

Although the institution of a criminal action is optional with the parties, for a suspension of the action it is indispensable that the document, the falsity of which is alleged, be of importance therein, without the violation of this article in any case being a motive for an annulment of judgment.

See article 361 of this law.

ART. 519. The answers to the pleadings and similar matters shall be made in view of the copies, documents, and orders which each party shall retain in his possession.

If, on account of some document having more than 25 sheets a copy thereof should not have been presented, the original shall be delivered to the opposite party for the purpose of making answer, being afterwards attached to the record.

ART. 520. Upon the expiration of the period allowed to a party to answer any pleading, proceedings, or act, without answer being made and after the expiration, in a proper case, of the extension which may have been allowed, such action shall be taken as may be proper, at the instance of the opposite party.

Nevertheless, any proper instrument shall be admitted and it shall produce its legal effects if presented before the day when notice of the order made thereupon is given. It shall not be admitted thereafter, and said order being considered final, the proceedings shall be continued.

ART. 521. If any document has been delivered to the parties which is not returned within the proper period, the proceedings prescribed in art. 308 for the recovery of the record shall be followed.

ART. 522. Excluding the provisions of article 513, the provisions of this section and those of the foregoing one are not applicable to oral trials, which shall be governed by the special rules therefor.[1]

CHAPTER II.—DECLARATORY ACTIONS OF GREATER IMPORT.

SECTION I.—*Complaint and summons.*

ART. 523. A declaratory action shall commence by the filing of a complaint, which shall succinctly and in numerical order state the facts and the principles of law upon which it is based, and the claim shall be clearly and precisely fixed, as well as the persons against whom the complaint is directed.

The kind of action instituted shall also be stated when a question of jurisdiction is to be decided thereby.[2]

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[1] Testamentary proceedings being instituted, the heir and the legal representative of the estate must be cited to appear.—*Decision of March 16, 1864.*

When three or more persons are sued together and *in solido*, the domicile of the greater number must be taken into consideration.—*Decision of December 13, 1868.*

[2] Arts. 224, 225, 254, 256, and 260 of the law of 1855 are equivalent to articles 523, 539, et seq. of the new law, and establish the manner of instituting actions and pleading exceptions, and the period within which the questions of fact and of law are to be definitely determined and which are the object of the judicial contention, in order that the question being confined to clear and precise terms, the order of the action may be methodized and the status of the litigants be equal, who otherwise would constantly be surprised by new questions.—*Decisions of June 15, 1866, and May 12,*

ART. 524. After the complaint, together with the necessary copies, has been presented, it shall be referred to the defendant or defendants, who shall be summoned to appear in the action within a period of nine days, which can not be extended.[1]

ART. 525. When the person to be summoned does not reside in the place where the action is instituted, the judge may extend the period for the appearance, granting such time as he may consider necessary, in view of the distances and means of communication, said extension not to exceed one day for every 30 kilometers of distance.

ART. 526. If the defendant, having been personally summoned, or after service of summons has been made upon the nearest relative or upon a member of the household found at his residence, allows the

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1865. For this reason no questions should be considered which are raised after the arguments have been closed.—*Decision of October 17, 1892.*

The plaintiff must determine in the complaint precisely what he claims and determine the kind of action he brings; and in the answers and rejoinders the plaintiff as well as the defendant must definitely determine the questions of fact and of law the object of the arguments, no definite judgment being permitted on points raised subsequently thereto, and on those which have not been argued or with regard to which no evidence has been taken.—*Decisions of December 4, 1865, and May 19, 1868.* An indication of the action brought is now only necessary in the case of the second paragraph of article 523.

Thus, if said instruments should not be objected to by the opposite party or the nullity demanded of a public document, upon which the opposite party bases his cause of action, the validity of said document must be admitted as an unquestionable fact, and can not be contested afterwards for the purpose of taking an appeal for annulment of judgment.—*Decision of January 30, 1864.*

When the action is based upon the nullity of an act or obligation, a declaration of nullity must previously be requested, and consequently an annulment of the other rights to which it gave rise.—*Decisions of April 26, 1861, January 30, 1864, April 28, and May 12, 1865.* But this is understood with regard to the plaintiff and not to the defendant who complies with this provision by taking an exception alleging the nullity of the document and its consequences.—*Decision of December 7, 1885.*

It is not necessary to give the technical name to the action instituted, but it is sufficient to determine the class to which it belongs, etc.—*Decision of October 7, 1858.* Actions are not classified according to the name given them by the parties, but according to the matter involved.—*Decision of October 14, 1886.*

A decision which definitely decides a cause can not possibly violate articles 523 et seq. of this law, which refer to the form in which the complaint is to be made in order to be admitted, and it is evident that after having been admitted it can not be alleged that a decision declaring that there was no basis for the action signifies a non-admission of the complaint.—*Decision of June 7, 1884.*

A complaint can not be rejected without any proceedings under the pretext of being unjust and frivolous, if it appears to have all the external legal conditions.—*Decision of January 31, 1885.*

With regard to the prescription of actions, the lapse of time is sufficient for it to take place without the other requisites which the law requires for the prescription of the ownership of real estate being necessary therefor.—*Decision of June 23, 1886.*

[1]The omission of the copies of the documents on which the cause of action is based does not constitute a basis for an annulment of judgment mentioned in subdivision 1 of article 1691 of this law.—*Decision of July 10, 1886.*

period fixed for the appearance to expire without appearing and be declared in default, the complaint shall be considered as answered. After being informed of this order, the action shall be proceeded with in default, other notifications to be served thereafter being made within the limits of the court.

ART. 527. If the summons should have been served by delivery to servants or neighbors, or by means of edicts, and entry in default on account of the failure of the defendant to appear has been requested, if he should not be found at his residence, a second summons shall be issued in the same manner as was the first one, citing him to appear within a period half that fixed in the previous summons.

If the second period expires without appearance, he shall be declared in default, and the complaint shall be considered answered at the instance of the plaintiff, this order and all others thereafter made, being served within the court.

ART. 528. If there are several defendants, the period for appearance to answer shall begin to run and be counted for all of them on the day following that on which the last defendant summoned was served.

Until this period expires, entry of default can not be requested against any of said defendants, and such request shall be presented in a single petition relating to all the defendants in default.

ART. 529. After the defendant has duly appeared, he shall be considered as a party to the action and shall be required to make answer to the complaint within twenty days thereafter.

This period shall be common for all the defendants when there are several, unless, by reason of the plaintiff not having submitted the copy of a document exceeding twenty-five sheets in length, the original one must be delivered to each of said defendants, and they can not litigate jointly. In such case the period within which to make answer shall be twenty days for the first of the defendants, and ten days for each of the others.

ART. 530. In case that there are several defendants, they must litigate jointly and be represented by the same counsel, if the exceptions they plead are all the same.

If they are different they may litigate separately. If it should appear from the answers that the same exceptions have been pleaded, the judge shall compel such defendants thereafter to litigate jointly and be represented by the same counsel.

SECTION II.—*Dilatory exceptions.*

ART. 531. If the defendant should plead any dilatory exception, he shall not be obliged to answer the complaint until the same has been disposed of, which must always be done before any further proceeding in the action.

ART. 532. The following only shall be admissible as dilatory exceptions:

1. Lack of jurisdiction.[1]

2. Want of personality on the part of the plaintiff on account of the lack of some qualification necessary to appear in an action, or because he does not prove the character or representative capacity under which he sues.

3. The want of personality in the solicitor of the plaintiff, on account of the insufficiency or illegality of the power of attorney.

4. Want of personality on the part of the defendant, because he does not have the character or representative capacity under which he is sued.

5. The pendency of another action in another competent superior or inferior court.

6. A legal defect in the manner in which the complaint is made.

It shall be understood that this defect exists when the requisites referred to in article 523 are not complied with in the complaint.

7. The absence of a prior demand made administratively, when the complaint is directed against the public treasury.[2]

ART. 533. If the plaintiff were a foreigner, a demand from the

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[1] Declinatures must be heard and decided as issues even when interposed in favor of the administrative authorities, requiring therefore a hearing of the department of public prosecution.—*Decision of July 12, 1880.*

When the appeal is based on the want of jurisdiction on account of the question involved, the appellant considering that the same is of an administrative character, an appeal for breach of form is not proper, but an appeal for breach of law may be taken in accordance with article 1692, number 6, of the Law of Civil Procedure.—*Decision of April 27, 1889.*

[2] The directors of associations in liquidation retain their powers to demand the fulfillment of obligations in favor of the same before their dissolution.—*Decision of October 12, 1888.*

A litigant can not allege the lack of personality of an opposite party when it has been recognized in other questions. Nor can the personality of a solicitor be questioned on account of the insufficiency of a power, especially if this was corrected, provided that said circumstance does not affect the validity of the power.—*Decision of July 4, 1878.*

A ruling relating to the dilatory exceptions of want of jurisdiction and *litis pendencia* is not definite for the purposes of an annulment of judgment, because it does not put an end to the action.—*Decision of March 31, 1885.*

The circumstance that a complaint administratively made in the name of the State had not been made before the judicial complaint, can not affect the question of competency.—*Decision of April 27, 1880.*

That is to say, this prior administrative complaint is equivalent to proceedings to secure a conciliation, and as the absence thereof does not vitiate the judicial proceedings according to article 461, the omission of the preliminary administrative proceedings can not affect it, nor can it be invoked as a basis to raise a question as to the competency of the court, as has been declared in a number of decisions, of which may be cited those of January 30, 1865, April 19, 1878, August 10, 1879, and May 20, 1882.

defendant for security for the purpose of satisfying anything which may result from the action, in the cases and in the manner in which said security is demanded of Spaniards in the country to which said foreigner belongs, shall also be considered a dilatory exception.[1]

ART. 534. Dilatory exceptions may be pleaded within six days only, counting from the day following the notification of the order requiring an answer to the complaint.

After said period has expired these pleas must be alleged in the answer and shall not produce the effect of suspending the course of the action.

ART. 535. All dilatory exceptions must be pleaded by the defendant at the same time and in the same instrument; if he does not do so, he can only make use of those not pleaded in his answer to the complaint.

ART. 536. All dilatory exceptions shall be referred to the plaintiff for a period of three days.

After the plaintiff has returned the exceptions they shall be heard and determined in the manner prescribed for issues.

ART. 537. The judges shall first decide upon the declinatory pleas and exceptions to the pendency of an identical action in another court if any of these exceptions have been pleaded.

If the judge declares himself competent, he shall at the same time decide all other dilatory exceptions.

In any case the ruling hereupon may be appealed from for a review and for a stay of proceedings.[2]

ART. 538. After the decision overruling the dilatory exceptions has been agreed to, or after it has become final, notice shall be served upon the defendant at the instance of the plaintiff requiring him to answer the complaint within the ten days following the service of the order.

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[1] The dilatory exceptions are all specified in this law, and that of security for the results of the action can only be pleaded in the case indicated. A decision which disallows this exception is not definite for the purposes of an annulment of judgment, nor does an appeal lie therefrom.—*Decision of March 13, 1871.*

This exception can not be pleaded, whatever be the laws of the country to which the foreigner belongs, when the latter has resided many years in Spain engaged in commerce and is a member of commercial associations, and consequently does not require this guaranty for the purpose of alleging his rights before the courts of the Kingdom arising from contracts executed in Spain and with Spaniards.—*Decision of October 13, 1881.*

In order that this dilatory exception be admissible and proper in an action, it is not sufficient that the litigant in question is a foreigner, but it is indispensable that said caution be required of Spaniards in the country to which he belongs, or of which he is a citizen.—*Decision of June 30, 1877.*

[2] When the exception to the jurisdiction is allowed, the judge must abstain from deciding any other questions.—*Decision of April 17, 1886.*

A decision overruling dilatory exceptions is not definite.—*Decision of September 29, 1886.*

SECTION III.—*Answers, counterclaims, replications, and rejoinders.*

ART. 539. The defendant shall make his answer in the manner prescribed for the complaint.

ART. 540. If the answer is not filed within the time fixed therefor, the complaint shall be considered as answered upon the petition of the plaintiff and the proceedings shall be continued as may be proper.[1]

ART. 541. In the answer to the complaint, the defendant must plead all the peremptory exceptions which may be proper and the dilatory ones which were not taken within the period prescribed in article 534.

In the same answer may also be included the counter-claim in cases in which it may be proper.

No counter-claim shall be admitted when the judge has no jurisdiction to take cognizance of the same on account of the matter therein contained.[2]

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[1] An answer may be admitted after the period of twenty days has expired, and an extension may be granted in a proper case if the plaintiff does not utilize the means or complaints authorized by articles 308 and 520 of the law.—*Decision of May 3, 1884.*

[2] The exception of *res judicata* requires the threefold identity of persons, things, and actions, and the reservation of rights made in the original judgment can not be understood in the sense that the same question can be reopened between the same persons on the same grounds.—*Decision of February 28, 1884.*

The exception of *res judicata* requires the threefold identity of person, thing, and action.—*Decisions of July 6, 1882; June 15, October 15, 1885; January 21, March 24, November 2, and December 7, 1886.*

The irrevocability of *res judicata* refers only to the persons who have been parties to the action.—*Decision of December, 29, 1883.*

Although it is true that in the answer to the complaint the defendant should plead his exceptions, and in replications and rejoinders should state definitely the points of fact and of law under discussion, it is no less certain that afterwards, in support of the counter exceptions, documents may be presented of a later date, or under oath of being new evidence, should they be of prior date.—*Decision of October 12, 1866.*

Although *res judicata* does not affect the persons who have not been parties to the action, it is evident that it may be pleaded as an exception when an action is in question, in which said parties bring a similar action with the same object in view, basing their claims upon the same rights contained in similar titles, so that the situation of the parties is identical.—*Decision of October 6, 1884.*

If an identity of persons and action exists, but not of things, the exception of *res judicata* can not be pleaded.—*Decision of October 20, 1884.*

Decisions rendered in executory actions have not the force of *res judicata.—Decision of March 6, 1885.*

Although *res judicata* prejudices only the persons who are parties to the action in which the final judgment was rendered, as well as their heirs and legal representatives, this general rule does not govern nor does it apply in the case of the declaration of the validity or nullity of a will, which affects all those who derive their action and right therefrom.—*Decision of June 2, 1886.*

If the action being heard in the absence and in the default of the defendants, the prescription of the rescissory action has neither been proposed nor been the object of the arguments, and which exception might have been pleaded by said defendants, in a proper case, there thus being lacking legal terms to allow or overrule said excep-

ART. 542. After the answer to the complaint has been filed, a counter claim can not be filed, the defendant reserving his right, which he may exercise in the proper action.

ART. 543. The exceptions and the counter claim shall be heard at the same time and in the same manner as the principal issue of the action, and shall be decided with the latter in the final judgment.[1]

The peremptory exception of *res judicata* is excepted when it is the only one pleaded. In such case, if the defendants should request it, said exception may be heard and decided according to the procedure prescribed for incidental issues.[2]

ART. 544. The defendant may make use of the privilege which is granted the plaintiff in article 501, to request the examination of witnesses before the expiration of the period of time prescribed for the taking of evidence, in the cases and in the manner prescribed in said article.

ART. 545. The answer to the complaint shall be referred to the plaintiff for a period of ten days in order to permit him to reply thereto, and the replication for a similar period to the defendant, in order that he may rejoin thereto.

ART. 546. The plaintiff may waive a replication, in which case a rejoinder shall not be permitted.[3]

The replication shall be considered as waived by the plaintiff when he expressly does so, or when he allows the period of time required for the filing thereof to expire without presenting the same, and when the opposite party requests that the papers referred to the plaintiff be ordered returned.

In such case the parties must, within the three days following, request, should they not already have done so, that the evidence in the case be taken, it being understood, otherwise, that they waive the right to do so.

ART. 547. In the replication and rejoinder, the plaintiff as well as the defendant shall concisely and definitely, in numbered paragraphs, state the points of fact and of law which are the object of the conten-

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tions, the adjudging chamber in doing so upon its own initiative commits a violation from which an appeal for annulment of judgment may be taken.—*Decision of December 15, 1887.*

Exceptions which are not pleaded in the answers or replications, can not be considered in the judgments nor serve as a basis for an appeal for annulment of judgment.—*Decision of February 23, 1888.*

[1] When in the answer to the complaint a counter claim is presented, the final judgment must decide the complaint and the counter claim, and if this is not done the provisions of this article are violated.—*Decision of April 22, 1869.*

[2] Articles 1251 and 1252 of the Civil Code state the conditions or requisites which produce *res judicata.*

[3] The lack of a replication does not constitute an implied acknowledgement and confession of the facts alleged in the answer and rejoinder.—*Decision of March 24, 1885.*

tion, being permitted to modify or make additions to those contained in the complaint and answer.

They may also amplify, add to, or modify the allegations and exceptions contained in the complaint and in the answer, but they can not change those which are the principal object of the action.[1]

ART. 548. In the replications and rejoinders each party shall clearly admit or deny the material allegations contained in the pleadings of the opposite party. Silence or evasive answers may be considered in the judgment as a confession of the facts to which they refer.

They may also request, by a supplementary prayer (*otrosi*), that the action be decided without further proceedings, or that evidence be taken therein.[2]

SECTION IV.—*Admission of evidence, time within which to be taken, and general provisions relating thereto.*

ART. 549. The judge shall order that evidence in the action be taken in case that all the litigants request it.

If any litigant should object thereto, a day shall be fixed for hearing the question of submission for the taking of evidence, at which hear-

[1] A complaint relating to a sum of money is not modified when a sum of money received subsequently is acknowleeged and deducted in the replication.—*Decision of March 9, 1885.*

In the replications and rejoinders, the parties may add to or modify the claims contained in the complaint and in the answer.—*Decision of February 10, 1886.*

The petitions deduced in the complaint and in the answer subsist, and they can not be considered modified by the replications and rejoinders, if it be not expressly requested or stated, or when it can not be inferred as a necessary consequence of the points of fact and of law indicated in said instruments.—*Decision of October 14, 1866.*

Law 2, Title XVI, Book XI of the *Novisima Recopilación*, which permits judgment to be rendered after the truth has been arrived at, is not observed since the publication of the law of civil procedure, as the supreme court has repeatedly stated.—*Decisions of June 26, 1866, and December 27, 1864.*

According to Law 25, Title II, Partida 3, although the plaintiff when he determines the reason upon which he bases his claim to a thing, afterwards bases his claim upon another reason, but he can not do so in the replication and rejoinder, nor in the second instance, but he may do so in a new action, upon the closing of the previous one.—*Decision of May 21, 1861.*

The points of fact and of law must be definitely fixed in the replications and rejoinders and new exceptions can not afterwards be pleaded, nor if they are pleaded, can they be taken into consideration.—*Decisions of May 21, 1859, and September 22, 1865.*

The complaint may be extended in the replication, but there can not be deduced in the same a petition and a new action entirely different from that deduced in the complaint.—*Decision of December 26, 1878.*

[2] The lack of a replication does not constitute either an acknowledgment nor an implied confession of the facts alleged in the answer to the complaint.—*Decision of March 24, 1885.*

The facts alleged in order to prove or deny the complaint should be proven by those who advance them.—*Decision of April 18, 1887, and November 18, 1887.*

ing the attorneys of the parties, if present, may be heard, the judge deciding what he may deem proper.

ART. 550. The ruling by which evidence is ordered taken can not be appealed from; the ruling by which the taking of evidence is refused may be appealed from for a review and stay of proceedings.[1]

ART. 551. If the litigants should have agreed to submit the case for judgment without the taking of evidence, the judge shall order that the record be brought before him and shall cite the parties to appear for judgment.

ART. 552. The ordinary period for the taking of evidence shall be divided into two parts common to all parties.

The first period of twenty days, which can not be extended, shall be for the purpose of stating in one or more written instruments all the matters upon which they desire evidence to be taken.

The second period of thirty days, which can not be extended either, shall be for the purpose of taking all the evidence proposed by the parties.

Within these periods the judge may, in view of the circumstances of the case, grant such time as he may deem sufficient therefor, which shall not be less than ten days for the first, nor fifteen days for the second period, but he shall extend said periods of time to the maximum when any of the parties request it.

ART. 553. The periods mentioned in the foregoing article can not be suspended, except by reason of *force majeure* which prevents the submission or the taking of evidence within the same.

This provision shall be applicable to the extraordinary periods of time for the taking of evidence referred to in the following articles.[2]

ART. 554. The extraordinary period for the taking of evidence shall be granted if it is to be taken outside of the islands of Cuba and Porto Rico or of their adjacent ones.[3]

ART. 555. The extraordinary periods shall be—

Four months if the evidence is to be taken in the islands of Cuba and Porto Rico reciprocally, or in the other Antilles.

Six months if in Europe or the Canary Islands.

Eight months if on the continents of America, or Africa, or ports of the Levant.

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[1] From an improper ruling refusing to allow evidence to be taken an appeal for annulment of judgment lies, in a proper case, for breach of form when a final judgment is rendered, but not for a breach of law.—*Decision of October 11, 1886.*

[2] The refusal to suspend the period for the taking of evidence cannot be considered as equivalent to a refusal to admit evidence.—*Decision of May 12, 1886.*

The suspension of the period can not be considered as a proceeding for the taking of evidence of those specially mentioned in the law, and which refusal may give rise to an appeal for annulment of judgment by reason of a breach of form.—*Decision of March 28, 1888.*

[3] A litigant may take advantage at the same time as his adversary of the extraordinary period granted upon the petition of the latter.—*Decision of April 8, 1861.*

One year if in the Philippines, or in any other part of the world not herein mentioned.

ART. 556. In order that the extraordinary period may be granted, it is necessary:

1. That it be requested within the three days following that on which notice of the ruling is served which orders that evidence be taken.

2. That the acts, evidence of which is to be taken outside of the territory of the islands of Cuba and Porto Rico and the adjacent ones, occurred in the country where it is desired to procure the evidence.

3. That when the evidence to be taken is of witnesses, the residences of the witnesses to be examined be stated in addition to the provisions prescribed in article 639.

4. That there be stated, in case the evidence to be taken is documentary, the archives in which said documents are recorded from which certificates are to be taken, and that they are pertinent to the action.

ART. 557. An extraordinary period must also be granted even if the acts occurred within the islands and the adjacent ones, if the witnesses who are to testify concerning the same are at any of the places mentioned in article 555.

In this case the names and residences of the witnesses must be stated in the petition.

ART. 558. The petition requesting that an extraordinary period be granted shall be referred to the opposite party for a period of three days, which can not be extended, and without further proceedings the issue shall be decided.

ART. 559. The ruling granting, or refusing to grant the extraordinary period, may be appealed from for a review only.

ART. 560. The extraordinary period for the taking of evidence shall commence to run at the same time as the ordinary period, but shall commence to be counted from the day following that on which notice of the ruling in which the same was granted, is served.

ART. 561. The litigant to whom an extraordinary period has been granted, and who does not take the evidence designated, shall be adjudged to pay to his adversary an indemnity which shall not be less than 1,250 pesetas nor more than 12,500 pesetas, as the judge taking cognizance of the action may determine, unless it should appear that the said party was not to blame therefor, or unless said party should waive the taking of said evidence before the expiration of the ordinary period.

This indemnity shall be imposed in the final judgment.[1]

[1] The imposition of a fine upon the party who has secured unjustly the grant of the extraordinary period for the taking of evidence, is not sufficient for an appeal for annulment of judgment, because, in addition, this measure referring to procedure, the fact of not having secured the evidence by the faults of the party requesting the extraordinary period, is to be determined by the court passing judgment.—*Decision of March 11, 1882.*

ART. 562. If after filing the replication and rejoinder some important fact, material to the decision of the case, should occur, or if any like fact of prior date comes to the knowledge of any of the parties, to which they swear that they had no previous knowledge, they may allege such facts clearly in writing during the first period designated for the admission of evidence, which shall be called a supplementary pleading.[1]

ART. 563. A copy of the supplemental pleading shall be given to the opposite party, in order that within the three days following its delivery he may fully admit or deny the fact or facts therein alleged.

At the same time he may allege other facts which may elucidate or controvert the facts set forth in the supplementary pleading.[2]

ART. 564. The evidence submitted shall confine itself to the definite allegations contained in the replication and rejoinder, or to those contained in the complaint and answer, and in those of the supplementary pleading in a proper case, which have not been fully admitted by the party prejudiced thereby.[3]

ART. 565. Judges shall on their own motion reject all evidence contrary to the provisions of the preceding article, and all other evidence which in their judgment is immaterial or impertinent.[4]

ART. 566. There shall be no remedy whatsoever against the decisions allowing proceedings for the taking of evidence.

Against decisions refusing the taking of evidence the only remedy shall be an application for a rehearing if interposed within five days, and if the judge should not admit it the interested party may make a similar application in the second instance.

ART. 567. If proceedings for the taking of evidence are requested within the last three days of the first period, the opposite party may,

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[1] Article 562 of this law refers alone to the different steps in a cause, and its violation can not give rise to an appeal except for breach of form.—*Decision of January 9, 1884.*

[2] It should be remembered that the admission of evidence in the second instance can be granted only when it was impossible to take the evidence in the first instance, owing to lack of time; but it can not be alleged when it has been proposed and taken during the period fixed by the law of civil procedure.—*Decision of March 10, 1873.*

[3] The allegations contained in the answer to the complaint have the force of proof, because, according to law, one party is relieved of the necessity of proving the facts which the other acknowledges in writing.—*Decision of February 20, 1880.*

According to Law I, Title XIV, Partida 3, and repeated decisions of the Supreme Court, evidence as to the facts whose truth is acknowledged by all parties is unnecessary; and the defendant having consented that there should be included in the inventory of an estate the rents of certain properties, evidence of such fact is not necessary, and the judgment absolving the defendant because the plaintiff did not prove the same, violates the aforementioned law.—*Decision of October 29, 1881, and October 17, 1882.*

[4] Evidence that can not be taken should be considered impertinent, and of this class should be considered that which has for its object the taking copies of several particulars contained in preliminary proceedings or causes, provisionally suspended, because this would be equivalent to violating the secrecy of the preliminary proceedings.—*Decision of May 16, 1888.*

within the three days after a copy of said request is delivered to him, present such evidence relating to the same facts as he may deem proper.

After the expiration of the latter period, or otherwise, upon the expiration of the twenty days prescribed in the second paragraph of article 552, the first period for the taking of evidence shall be definitely closed, and an order shall be made opening the second period.[1]

ART. 568. Judges shall examine all documentary evidence submitted in the order in which it is presented.

They shall immediately issue compulsory orders, letters rogatory, and all other process which may be necessary for the taking of evidence beyond the seat of the judicial district; but they shall not be delivered to the interested party until after the decision opening the second period is rendered, and until after the clerk shall have entered an endorsement upon said decision, showing the period granted for the taking of evidence and the day on which said period commences.

ART. 569. All proceedings for the taking of evidence, including that of witnesses, shall be public after a citation of the parties twenty-four hours in advance, the litigants and their attorneys being permitted to be present.[2]

ART. 570. The party to whom they belong shall not be previously cited to appear at the examination of the books and papers of the litigants.

The examination of documents shall always be made in the presence of the interested party or of a member of his family, and, in their absence, in the presence of two witnesses, residents of the same town.

ART. 571. Notwithstanding the provisions of article 569, the judges may order that such evidence as would produce scandal, or offend public morals, be taken behind closed doors, always allowing the parties and their attorneys to be present.

ART. 572. The judge shall, at a reasonable time beforehand, fix a day and hour for the taking of any evidence that should be given before him.

ART. 573. The parties may designate a person to represent them at the taking of evidence beyond the place of the residence of the judge. This appointment shall be expressed in the letters requisitorial, letters rogatory, or communication addressed for that purpose.

In such case, the court or judge to whom said communication is addressed, shall appoint a day or hour for the taking of said evidence, and shall cite the person or persons designated to appear, if they be residents of that place or have entered an appearance.

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[1] Against these decisions no appeal shall lie except an application for a rehearing, and if this is not made nor advanced in the second instance, an appeal for annulment of judgment shall not be allowed.—*Decision of June 15, 1885.*

[2] Evidence must be taken before the courts and according to the formalities prescribed by law.—*Decision of April 2, 1887.*

ART. 574. The parties and their attorneys who appear at the proceedings for the taking of evidence shall simply attend the same, and shall not intervene therein in any other manner than that prescribed for each class of evidence.

Any person violating this rule shall be admonished by the judge, and if he persist in his disobedience the judge may deprive him of his right to be present.

ART. 575. A separate record shall be made of the evidence of each of the parties, which shall afterwards be attached to the main record.

ART. 576. All proceedings for the taking of evidence held after the expiration of the second period prescribed therefor, shall be null and void.

SECTION V.—*Means of proof.*

ART. 577. The means of proof which may be employed in an action are the following:

1. Confession in court.
2. Formal public documents.
3. Private documents and correspondence.
4. Commercial books kept as prescribed in section 2, title 2, book 1, of the Code of Commerce.[1]
5. Opinions of experts.
6. Judicial examination.
7. Witnesses.[2]

§ 1.—*Confession in court.*

ART. 578. From the time the action is submitted for the taking of evidence until the citation for judgment in the first instance, every litigant is obliged to make his statement under oath when the opposite party requires it.

This shall be understood without prejudice to the provisions of number 1 of article 496.[3]

ART. 579. These statements may be made at the election of the party requesting them, under a decisory or indecisive oath.

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[1] This reference is to the old code. The code in force treats of the subject mentioned in the present article, in Title III of Book I (articles 33 to 49, inclusive).

[2] It can not be said that article 577 of this law or article 42 of the Code of Commerce is violated, when the judgment is not based alone on the evidence taken from the commercial books which lack some of the legal requisites in order to be admitted as conclusive evidence.—*Decision of January 9, 1884.*

[3] The confession made in court must be related to the other replies given by him who confesses, and also with all the other evidence.—*Decision of November 12, 1884.*

The adjudging chamber is authorized to weigh the evidence as it may deem proper, but can not pass it by or deny it.—*Decision of March 26, 1889.*

In the first case said testimony shall be considered full proof even though there be additional evidence.

In the second case it shall prejudice only the person who testifies.[1]

ART. 580. The interrogatories shall be in writing, stated with clearness and precision in the affirmative sense, and must be confined to facts pertinent to the issue.

The judge shall, *ex officio*, reject all questions not possessing these requisites.

No copy of the interrogatories shall be attached to the original.

ART. 581. The person interested may present his interrogatories in a sealed envelope, which the judge shall keep unopened until appearance is made to reply thereto.

The presentation of the interrogatories may be delayed until appearance is made to reply thereto, a request being made to cite the party whose testimony is required, to appear for that purpose.

ART. 582. The judge shall fix the day and hour upon which the parties shall appear for the purpose of answering the interrogatories.

The person who is to testify shall be cited at least one day before the hearing.

If he fails to appear or show good cause for nonappearance, he shall again be cited to appear at another stated day and hour, with the admonition that if he does not then appear, his absence shall be taken as a confession.

ART. 583. At the time of the appearance the judge shall decide on the admission of the questions, whether presented under sealed cover or at the time of the appearance, and shall then proceed to the examination of the party who is to answer thereto upon each question admitted.

ART. 584. The witness shall personally answer *viva voce* in the presence of the opposite party and his attorney, if attending.

The witness can not make use of any prepared draft of his replies, but he shall be permitted to consult at the time simple notes or memoranda, when, in the opinion of the judge, they may be necessary to refresh his memory.

ART. 585. The answers must be affirmative or negative, the witness being permitted to make such explanations as he may deem proper or those which the judge may request.

If he refuses to testify, the judge shall admonish him at once that if he refuses to answer it shall be taken as a confession on his part.

If the answers should be evasive, the judge shall, *ex officio* or at the instance of the opposite party, likewise admonish him that the facts

[1] Confession in court made with all necessary requisites constitutes full proof against him who makes the same.—*Decision of November 18, 1886.*

about which he refuses to give categorical or direct answers shall be accepted as confessed.[1]

ART. 586. A witness may refuse to answer a question when it refers to a fact of which he has no personal knowledge.

Only in such a case may interrogatories be answered by a third person having personal knowledge thereof, by reason of having acted on behalf of the person interrogated, if the latter should request it, and accepts the liability therefor.

ART. 587. If the party proposing the interrogatories should be present at the time the testimony is taken, both parties may reciprocally and in person, without the intervention of their attorneys or solicitors, and through the judge, ask each other such questions and make such remarks as the judge may deem proper for discovering the truth of the facts, but without interrupting each other.

The judge may also request such explanations as he may deem conducive to this end.

ART. 588. The clerk shall make a record of the proceedings, in which shall be inserted the testimony given, which may be read by the person giving the same. Otherwise the clerk shall read it, the judge then asking said witness if he ratifies said testimony, or whether he has anything to add or change; his statements shall then be added to the proceedings, after which they shall be signed by the witness, if he is able to do so, and by the judge and the others present, and shall be certified to by the clerk.

ART. 589. When two or more litigants are required to answer to the same interrogatories, the judge shall adopt, if the person interested requests it, the precautions necessary to prevent them from having any communication with each other, or advise each other beforehand as to their contents.

ART. 590. If, on account of the illness of the litigant or other special circumstances, he can not appear to answer the interrogatories, the judge may, if he deems it proper, go to the house of said litigant, together with the clerk, in order to take his evidence.

In such a case the opposite party can not be present; but he may examine the testimony, and may request that within three days a reexamination be made in order to elucidate some doubtful point with regard to which no categorical answer had been given.

ART. 591. A litigant residing within the judicial district may be

[1] The provisions of the law of civil procedure with reference to considering as confessed the litigant who refuses to reply to questions, is applicable in an ordinary action as well as in an issue of poverty.—*Decision of February 18, 1870.*

The "*cognoscencia*" to which Law 2, Title 13, of Partida 3 gives and attributes the value of full proof is the judicial, explicit, and absolute confession; but not that which is limited to but one part of the complaint, denying at the same time the validity of the remainder, which in a particular manner constitutes the essential basis of the alleged action or exception pleaded.—*Decision of June 22, 1878.*

obliged to appear before the judge taking cognizance of the cause, in order to give his testimony, unless, in the opinion of said judge, there is a good cause which prevents him from so doing.

In such case, as well as when he lives beyond the judicial district, he shall be examined by means of a commission or letters rogatory, to which shall be attached the interrogatories, after being approved by the judge, and inclosed in a sealed envelope, which shall be opened at the time of taking the declaration.

ART. 592. If the person whose declaration is to be taken does not appear upon the second citation without giving a good cause for his non-appearance, or if he refuses to testify, or answer either affirmatively or negatively, notwithstanding the admonition addressed to him, such action may be considered as a confession in the final judgment.

ART. 593. New interrogatories can not be demanded concerning facts which have already been the object of previous ones.

Neither can such deposition be demanded more than once by either party after the expiration of the period for the admission of evidence.

ART. 594. In actions in which the State or any corporation thereof is a party, the public prosecutor, or the person representing said party, shall not be required to testify. In lieu thereof, the opposite party may submit in writing the questions he may desire to ask, which shall be answered by means of a report prepared by the employees of the administration having knowledge of the facts.

These communications shall be addressed through the person who represents the State or corporation, who is obliged to file the answer within the period which the judge may fix.

§ 2.—*Public documents.*

ART. 595. Under the name of formal public documents are included:

1. Public instruments drafted according to law.

2. Certificates issued by exchange and commercial brokers, of entries contained in the record of their respective transactions in the manner and with the formalities prescribed by article 64 of the Code of Commerce and by spcial laws.[1]

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[1] This reference is evidently to the old Code of Commerce, and the code at present in force contains the following:

Art. 93. The licensed agents shall have the character of notaries in all that refers to the negotiation of public instruments, industrial and commercial securities, merchandise, and the other commercial acts included in their office in the respective center.

They shall keep a registry book in accordance with the prescriptions of article 36, entering therein in proper order, separately and daily, all the transactions in which they may have taken part, being moreover permitted to keep other books with the same formalities.

The books and policies of licensed agents shall be admitted as evidence in suits.—*Code of Commerce in force in Cuba, Porto Rico, and the Philippines.*

See in addition article 58 of the Code of Commerce in force, and also number 2 of article 596 of the present law.

3. Documents issued by public officials who are authorized to issue the same in the exercise of their official duties.

4. Record books, by-laws, ordinances, registers, poll and property statistics, and other documents in public archives or depending on the State, provinces, or towns, and copies made and authenticated by the secretaries and archivists, by order of the proper authorities.

5. The ordinances, by-laws, and regulations of companies, corporations, or associations, providing they have been approved by public authority, and copies certified to in the manner prescribed in the foregoing number.

6. Records of certificates of births, marriages, and deaths taken from the registers by the parish priests, or by the persons in charge of the civil registers.

7. Writs of execution and all kinds of judicial proceedings.[1]

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[1] Instruments transferring ownership can not be admitted or have any effect in a cause unless registered in the registry of property.—*Decision of October 22, 1857.*

Copies of records issued by parish priests may be questioned for lack of due form.—*Decision of September 10, 1864.*

When a decision is rendered absolving a defendant owing to the fact that the documents presented by the plaintiff were not recorded in the registry of property, the case may be opened again with reference to the same subject after the defects contained in the documents have been cured without an exception of *res judicata* being permissible.—*Decision of December 27, 1869.*

In giving more value to a will, in which a child is declared and acknowledged as a natural child of the testator and the same is constituted heir, than to the baptismal register, in which it appears that the child is the natural child of another, is not a violation of the law of civil procedure.—*Decision of January 14, 1873.*

The law of civil procedure only indicates the means of proof which the litigants may employ in a cause, and defines those included under the name of formal public documents without specifying as to their intrinsic efficacy compared with others.—*Decision of December 31, 1877.*

All the documents which in the last century were issued in the territory of Mallorca without the formalities required by the *Novísima Recopilación*, Law 1, Title 23, Book 10, were and are valid according to the custom which obtained in said place and at that time and, by virtue of which, they are of force both within and out of court.—*Decision of February 20, 1878.*

The decisions which declare a right, although with the clause "without prejudice to a third person," may be an element of proof which may be employed by those who were not parties to said cause.—*Decision of June 28, 1882.*

Although the baptismal registries are public documents, their value as evidence does not go beyond proving the act itself, and does not prove others, which must be proven by other evidence.—*Decision of April 3, 1884.*

Opinions submitted by experts in a cause do not have the character of a public document.—*Decision of October 1, 1884.*

With reference to number 2 of this article, see articles 36, 93, 102, and 103 of the Civil Code in force.

When it is impossible to present or find certain parish registers, the court may form its judgment on the strength of the ones presented, or from other evidence.—*Decision of October 10, 1889.*

The certificate given by the director of an asylum or hospital for the insane, stating

ART. 596. In order that formal public documents be valid in an action, the following rules must be observed:

1. When presented in an action without citation served upon the opposite party, they must be compared with the originals prior to said citation, if their authenticity or exactness is questioned by the party prejudiced thereby. Otherwise they shall be considered genuine and effective without the necessity of such comparison.

2. When they are to be included in the record in accordance with the provisions of article 504, or in the cases mentioned in article 505, they must be issued by virtue of a compulsory order made therefor after the party prejudiced thereby has been cited to appear.

3. That if the certificate requested should be but a part of a document, there be added thereto the part the opposite party may request, should he deem it proper.

Such request shall be made at the time the certified copy is issued, and the party requesting the same shall pay the added cost thereof, without prejudice to what may finally be decided as to the payment of costs.

4. The transcripts or certified copies must be furnished by the custodian of the archives, office, register, or protocol in which the documents are filed, or by the clerk in charge of the judicial records, or otherwise by the clerk of the court before which the action is pending.

Such transcripts and certified copies shall be issued under the official liability of the custodians of the originals, and the intervention of the

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that a certain person had been admitted thereto on a certain day and died there, is only valid in a cause to prove what is stated, that is, the fact that the person mentioned in the certificate remained in the asylum for the insane the time mentioned, and although from this fact the presumption of insanity arises, in order to be duly considered, it should be supported by special and direct proof.—*Decision of February 14, 1863.*

After the parish priests issue copies of their registers, their functions cease, and the contents of said copies cannot be altered except by order of the competent legal authority.—*Decision of April 16, 1864.*

The facts which were formerly proven by the parish registers are now proven by a certificate of the civil register; and have been since the law of June 17, 1870, which is in harmony with the civil code.

Law 5, title xxiv, book 10 of the *Novísima Recopilación* is violated when contracts contained in public instruments are not given preference over those contained in private documents, although the latter be written on stamped paper.—*Decision of November 21, 1872.*

The certificate issued with reference to the poll of residents of a town in order to prove that the plaintiff was a servant of the person alleged to have employed her, and who makes claim for wages, does not prove that there was any contract between them, for, according to the practice established by the supreme court, the documents of the class to which said certificate belongs only proves the fact of the record and in no manner whatsoever the statement or claims contained therein with reference to prior and distinct acts.—*Decision of October 14, 1882.*

parties in interest shall be limited to designate what is to be transcribed or certified to, and to be present at the comparison thereof.[1]

ART. 597. The following documents shall be valid without comparison, reserving contradictory evidence and the provisions of article 606:

1. Writs of execution and certified copies or transcripts of final judgments, issued in legal form by the court making the same.

2. Ancient public documents which are not of record and all those whose protocol or original may have disappeared.

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[1] The violation of this article is not a sufficient ground for an appeal for annulment of judgment.—*Decision of October 18, 1882.*

Article 596 of the law is not violated when the authenticity or exactness of some documents has not been questioned formally and in due time.—*Decision of October 8, 1885.*

According to the doctrine admitted in practice no document can be made a public instrument without the citation of the persons interested who may be prejudiced thereby, or without a judicial order in a proper case.—*Decision of June 12, 1882.*

Although it is true that according to law 114, Title XVIII, part. 3, public instruments are valid as evidence in suits, they do not legalize contracts made contrary to other laws.—*Decision of April 9, 1881.*

This article does not determine the legal value of the documents which the parties may present in an action, but their efficacy by reason of the form in which they have been presented.—*Decision of February 15, 1864.*

There is no difference between the first or subsequent copies of public instruments unless a first copy being in question the comparison requested with the original can not be made because the latter has been lost.—*Decision of June 8, 1866, and May 24, 1860.*

According to the spirit of law 2, Title XVI, Book X of the *Novísima Recopilación*, in the event of the registries and protocols having been lost, full faith and value should be given to the first copy of a public document taken from the true original by the same notary who authorized it when falsity or any defect other than the lack of verification or comparison is not alleged.—*Decision of January 26, 1866.*

In order that public documents be valid in a cause, it is not sufficient that they have been drafted according to the prescriptions of law 114, Title XVIII, Partida 3, but it is also necessary according to article 281 of the law of civil procedure, that those which have been presented in a cause without citation be compared with the originals, unless the person who may be prejudiced thereby has given his express consent, or their authenticity is proven by other means.—*Decision of November 15, 1880, and November 2, 1883.*

Article 281 of the law of 1855 did not require a comparison when the document was presented by express consent, and article 597 of the law of 1881 only requires the comparison when its authenticity or exactness had been expressly questioned. Therefore, as formerly express consent was necessary, now an implied consent is sufficient.

Letters signed by the hand of a notary public with the formalities and other requisites of law 114, Title XVIII, Partida 3, are complete evidence of ownership, if there is no doubt as to their authenticity and they contain no erasures which would invalidate them according to other laws of the title and partida cited.—*Decision of March 16, 1878, January 22, 1878, and April 29, 1878.*

3. Any other formal public document which by its nature has no original or recorded copy with which it may be compared.[1]

ART. 598. The comparison or verification of public documents with their originals shall be made by the clerk, who must go for the purpose to the archives or place where the original is kept, the day and hour being previously determined, and perform his duty in the presence of the parties and their attorneys, should they attend.

The judge may also in person make a comparison, if he considers it proper.[2]

ART. 599. Documents executed in other countries shall have the same validity in an action as those executed in Spain, providing they possess the following requisites:

1. That the subject matter of the act or contract be lawful and permitted under the laws of Spain.

2. That the contracting parties have legal power and capacity to contract according to the laws of their own country.

3. That in the execution thereof all formalities and requirements prescribed in the country wherein the acts or contracts were made have been observed.

4. That the document be legalized and possess the other requisites necessary to prove its authenticity in Spain.

ART. 600. To every document drafted in any language other than Spanish there shall be accompanied a translation thereof, and copies of both the original and translation.

Said translation may be made privately, in which case, if any of the parties question it within three days, stating that he does not consider it a true and faithful translation, the document shall be transmitted for translation to the official in charge of this service in the general government in the islands of Cuba and Porto Rico, respectively, and should there be none, to the colonial department through the respec-

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[1] The fact of not having executed an instrument on the proper stamped paper does not affect its quality or validity.—*Decision of May 26, 1867.*

[2] The ruling which denies the admission of documents in certain proceedings is not final.—*Decision of April 6, 1885.*

The act of comparing certain obligations with the stub book from which they were taken, is merely preparatory to the final judgment and is not a proceeding for the taking of evidence, which gives rise to an appeal for annulment of judgment when denied.—*Decision of November 4, 1885.*

With reference to documents issued in a foreign country, consult the royal decree of October 17, 1851, and article 35 of the royal decree of November 17, 1852, with reference to aliens. The treaties which the Spanish Government has celebrated with other countries should also be consulted.

When the documents which come from abroad are forwarded by vice-consuls or consular agents who do not correspond directly with the Secretary of State they should also be signed by the head of the legation or the respective consul.—*Circular of June 7, 1859,* to which reference is made in the *decision of June 30, 1866.*

tive governor-general, in order that it be translated by the bureau of translations.

§ 3.—*Private documents, correspondence, and books of merchants.*[1]

ART. 601. The original private documents and correspondence in the possession of the litigants shall be presented and attached to the records.

When they form part of a book, proceedings, or package, the whole thereof shall be exhibited in order that certified copies of such parts as the persons interested may designate may be made therefrom.

The same method shall be observed with regard to documents in the possession of a third person who declines to allow them to leave his possession.[2]

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[1] See articles 1225 to 1230 of the Civil Code.

[2] According to laws 114 and 119, Title XVIII, Partida 3, for the validity and force in action of private documents, the testimony of witnesses must be taken after the documents have been submitted, even of those who attended the proceedings and whose names appear in the documents.—*Decision of February 8, 1858.*

Law 119, Title XVIII, Partida 3, which does not consider sufficient proof the comparison of a private document with others of undoubted validity to show the authentic character of the former, refers to the case wherein the one who signed it afterwards denies it.—*Decision of May 9, 1863.*

Although a private document has not in itself legal validity to prove the transfer of ownership of real estate, according to law 114, Title XVIII, Partida 3, which requires for this class of contracts the execution of a public instrument, said law can not be considered violated by a judgment which gives weight to such a private document when the truth of its contents has been proven by the acknowledgment of the vendor and that of the witnesses who took part in its execution.—*Decision of January 28, 1865.*

Private documents are evidence against the subscriber thereof when he acknowledges the same, as provided by law 119, Title XVIII, Partida 3. This doctrine, however, is not applicable to dowry instruments when they prejudice a third person, in which case the delivery of the dowry must be proven in another manner, aside from the simple admission of the husband that he received it.—*Decision of June 20, 1865.*

Only in treating of the comparative value of a private document as against a public document is law 31, Title XIII, Partida 5, applicable.—*Decision of June 20, 1865.*

In order that private documents be valid against those who wrote them or who ordered them written, they must be acknowledged by their authors or it must be proven that they were made at their orders, as prescribed in law 114, Title XVIII, Partida 3.

Credit entries in books made from memory can not prejudice the person who did not make or authorize them to be made, according to law 121 of the above-mentioned title and code.—*Decision of June 12, 1867.*

Law 4, Title XXVIII, Book XI, of the *Novísima Recopilación* is repealed by the Law of Civil Procedure, and although article 1429 of said procedure contains the same provision, it should be remembered that, according to the express declaration of the Supreme Court the legal value of private documents acknowledged before a judicial authority gives them no more weight and virtue in ordinary causes than that which

ART. 602. Persons not parties to an action shall not be compelled to exhibit private documents belonging exclusively to them, reserving the right of the person needing the same, which he may exercise in the proper action.

If said persons are disposed to exhibit them voluntarily, they shall not be compelled to present them at the clerk's office, and if they request it, the clerk shall go to their residences or offices to make certified copies thereof.[1]

ART. 603. Private documents and correspondence shall be acknowledged or denied under oath before the judge by the person prejudiced thereby, if requested by the opposite party.

Such acknowledgment shall not be necessary if the person prejudiced by said document shall have acknowledged its authenticity in his answer, replication, or rejoinder.

ART. 604. When commercial books are to be employed as evidence, the provisions of articles 51 and 52 of the Code of Commerce shall be observed, and they shall be exhibited at the place of business or office where such books are kept.[2]

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of right belongs to them when questioned by a third person.—*Decision of June 18, 1879.*

Law 119, Title XVIII, Partida 3, in so far as it relates to the suppletory proof of private documents, when not acknowledged by the person who executed the same, is repealed by the Law of Civil Procedure, and in such case any of the means of proof authorized by the latter may be employed, for the purpose of proving the legitimacy of the document and the existence of the contract contained in the same.—*Decision of December 27, 1881.*

A private document can produce no effect in a cause in which final ruling has been rendered declaring it not admissible.—*Decision of November 19, 1880.*

Private documents are valid whose falsity has not been questioned when the attesting witnesses who subscribed the same at their execution acknowledge them, even when one of those who executed the same may have died.—*Decision of October 2, 1888, and December 3, 1889.*

[1]The syndics as representatives in bankruptcy proceedings and of the bankrupt have the right, in the discharge of their duties, to request the necessary data of persons or of judicial entities with whom the bankrupt may have had business relations. Articles 602 and 603 of the Law of Civil Procedure are not applicable when treating of merchants with regard to whom the special provisions of article 21 of the Code of Commerce are applicable.—*Decision of December 20, 1888.*

[2]The law in force mentioned in this article are articles 45 to 49 of the Code of Commerce of 1885.—*Decision of December 20, 1888.*

The articles referred to in the foregoing decision are as follows:

ART. 45. No official inquiry can be instituted by judges or courts nor any authority in order to ascertain if merchants keep their books in accordance with the provisions of this code, nor any general investigation or examination of the bookkeeping in the offices or counting houses of merchants.

ART. 46. Neither can the general communication, delivery, or inspection of the books, correspondence, and any other documents of merchants be decreed at the instance of a party, except in case of liquidation, universal heirship, or bankruptcy.

ART. 47. With the exception of the cases mentioned in the foregoing article, the exhibition of the books and documents of merchants can only be decreed, at the

§ 4.—*Comparison of handwriting.*

ART. 605. Comparison of handwriting may always be requested whenever its genuineness is denied by the person prejudiced thereby, or when a doubt is raised as to the authenticity of any private or public document, an original of which does not exist and which can not be verified by the official who issued the same. Said comparison shall be

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instance of a party, or officially, when the person requesting it has any interest or liability in the question in which the exhibition is to take place.

The inspection shall be made in the counting house of the merchant, in his presence, or that of the person he may designate, and shall be limited exclusively to the points which relate to the matter in question, said points being the only ones which may be verified.

ART. 48. In order to graduate the weight of evidence of books of merchants the following rules shall be observed:

1. Books of merchants shall be evidence against themselves, no proof to the contrary being admitted; but the opponent can not accept the entries which are favorable to him and reject those which prejudice him; but, having admitted this means of evidence, he shall be subject to the results which they may conjointly entail, taking into equal consideration all the entries relating to the matter in litigation.

2. If the entries of the books exhibited by two merchants should not conform, and those of one of them have been kept with all the formalities mentioned in this title and those of the other contain any defects or lack the requisites prescribed by this code, the entries of the books correctly kept shall be admitted against those of the defective ones unless the contrary is demonstrated by means of other proofs legally admissible.

3. If one of the merchants should not present his books or should state that he does not possess any, those of his adversary, kept with all the legal formalities, shall be evidence against him unless it is proven that the lack of said book is caused by force majeure, and always reserving the evidence against the entries exhibited, by the other means legally admissible in suits.

4. If the books of the merchants possess all the legal requirements and are contradictory, the judge or superior court shall determine by the rest of the evidence, classifying it according to the general legal rules.

ART. 49. Merchants and their heirs or successors shall preserve the books, telegrams, and correspondence of their business in general for the entire period which the latter may last, and until five years after the liquidation of all their commercial transactions and business.

Documents which specially relate to certain acts or transactions may be rendered useless or destroyed after the time of the limitation of the actions which could be brought by virtue thereof has elapsed, unless some question referring to the same directly or indirectly is pending, in which case they must be kept until the conclusion thereof.

See also the following articles of the same code:

ART. 709. A bill of lading drawn up in accordance with the provisions of this title shall be proof as between all those interested in the cargo and between the latter and the underwriters, proof to the contrary being reserved by the latter.

ART. 710. Should the bills of lading not agree, and there should not be observed any correction or erasure in any of them, those possessed by the freighter or consignee signed by the captain shall be proof against the captain or agent in favor of the consignee or freighter; and those possessed by the captain or agent signed by the freighter be proof against the freighter or consignee in favor of the captain or agent.

made by experts, according to the provisions of the fifth paragraph of this section.[1]

ART. 606. The person demanding the comparison shall designate the document or documents with which said comparison is to be made as to the authenticity of which there is no doubt.

Should no such documents exist a public document shall be considered efficient, and with regard to private documents the judge shall take their value into consideration in combination with the other evidence.

ART. 607. The following shall be considered as genuine for the purposes of comparison:

1. The documents which the parties acknowledge as such by common agreement.

2. Formal public instruments.

3. Private documents, the handwriting or signature of which has been acknowledged in court by the person alleged to be the writer thereof.

4. The portion of the document questioned, the handwriting of which is acknowledged by the person prejudiced thereby.

In the absence of these means the party alleged to be the writer or subscriber of the document questioned may be required, at the instance of the opposite party, to write such sentences as the judge may dictate at the time. Should he refuse to do so, such refusal may be held as an acknowledgment of the authenticity of the document questioned.

ART. 608. The judge shall himself make the comparison after hearing the experts thereupon, and he shall decide upon the result of this proof in accordance with the rules of sound judgment, without being obliged to subject himself to the opinion of said experts.[2]

§ 5.—*Opinion of experts.*

ART. 609. Expert testimony may be used when, in order to determine or consider some fact of influence in the action, scientific, artistic, or practical knowledge becomes necessary.[3]

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[1] The comparison of signatures made by virtue of an order is not subject to the conditions established for these proceedings in the Civil Procedure, and therefore the decision rendered by virtue of a comparison made in the manner prescribed does not violate these provisions, although the documents employed for this purpose do not conform to the conditions established in the article mentioned.—*Decision of April 20, 1877.*

[2] Courts are not obliged to adjust their decisions to the opinions of experts, and less so when said opinions are deficient.—*Decision of March 7, 1885.*

[3] A ruling denying the admission of expert testimony is not definite for the purposes of an appeal for annulment of judgment.—*Decision of April 29, 1886.*

There is no breach of form when a petition that handwriting experts give testimony with regard to the sense, expression, and intention of a document is denied, which are facts which can and must be considered only by the court and with regard to which said experts are not competent.—*Decision of March 22, 1888.*

The general principle of this article concords with article 1242 of the Civil Code, and which in article 1243 refers to this law with regard to the value and manner of taking expert testimony.

ART. 611. The party who desires that expert testimony be taken shall state clearly and precisely the matter with regard to which he desires expert testimony.

In the same instrument he shall state whether one or three experts are to be designated.

ART. 612. Within the three days following that of the delivery of the copy of the instrument requesting said expert testimony, the opposite party or parties may briefly state what they may deem proper with regard to the pertinency thereof or its extension, in a proper case, to other questions at issue, and as to whether the number of experts is to be one or three.

ART. 613. The judge, without further proceedings, shall decide what he may deem proper with regard to the admission of said testimony. Should he consider it pertinent he shall state in the same ruling upon what points the expert testimony is to be taken and whether it is to be given by one or three experts.

With regard to the last point, he shall consider the number agreed upon by the parties, and should they not have agreed upon a number, he shall decide what he may deem proper, without further remedy, taking into consideration the importance of the question and the amount involved in the action.[1]

ART. 613. In the same decision by which expert testimony is ordered taken, the judge shall order the parties or their solicitors to appear before him at a day and hour which he may fix, within the six days following, for the purpose of agreeing upon the expert or experts to be appointed.

If a party should not appear it shall be understood that he agrees to the experts designated by the opposite party.

ART. 614. The experts must have a diploma as such in the science or art to which the matter upon which they are to give their opinion belongs, if their profession is regulated by law or by the Government.

Otherwise or should there not be experts of this class in the judicial district, if the parties should not agree to select them from another place, any person having a knowledge of the subject, even though he should have no diploma, may be selected.[2]

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[1] A judge who should consider impertinent and unnecessary the expert testimony requested by a party in an action upon a letter which has already been acknowledged as genuine by its author and should refuse it, acts in accordance with the provisions of article 612 of the law of civil procedure.—*Decision of December 15, 1888.*

[2] Agricultural experts may measure estates, whatever be their area, and appraise those whose area is not more than 30 hectares when judicial proceedings are in question.—*Article 12 of the Regulations of October 14, 1887.*

The judicial examination of works, whether made judicially or extrajudicially, may be made by architects or builders; but when buildings of a public character are in question, the architects only can act.—*Articles 2, 3, and 8 of the Royal decree of*

[illegible]niture, clothing, and jewelry do not require a diploma,

ART. 615. When the parties do not come to an agreement with regard to the appointment of an expert or experts, the judge shall at once place in a box the names of three at least for each one to be designated from among those who pay in the judicial district an industrial tax for the profession or industry to which their occupation belongs, and those selected by lot shall be considered as appointed.

Should there not be a sufficient number, the selection and appointment of the expert or experts shall be made by the judge within two days after that of the appearance.

ART. 616. The experts who at the time of the appearance may be challenged by any of the parties on account of any of the causes mentioned in article 620, shall not be included in the drawing, nor shall they, in a proper case, be appointed by the judge.

ART. 617. After the expert or experts have been appointed they shall be informed thereof, in order that they may accept the same and take an oath that they will well and faithfully perform their duty within the limits which the judge may assign to them.

ART. 618. The experts may be challenged for causes which arise subsequent to their appointment.

Those selected by lot or appointed by the judge may also be challenged for causes arising prior to their appointment.

ART. 619. The challenge shall be interposed in an instrument signed by the attorney and the solicitor of the party, and shall briefly state the cause of challenge and the means of proving the same.

In the case of the first paragraph of the foregoing article, the written challenge must be filed before the day fixed for the beginning of the examination; in the second case, within two days after notice of their appointment has been served.

ART. 620. The following are legitimate causes of challenge:

1. That the expert is a relative of the opposite party by consanguinity or affinity within the fourth civil degree.

2. That he has previously given an opinion upon the same question adverse to the challenging party.

3. That he has rendered services as such expert to the opposite litigant or that he is a partner or employee of the same.

4. That he has a direct or indirect interest in the action or another similar one or an interest in the company, establishment, or enterprise against which the challenging party is litigating.

5. Manifest enmity.

6. Intimate friendship.

ART. 621. The judge shall, *eo instanti*, deny the challenge if it is

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the judges being permitted to make use of the services of those whom they consider most proficient, provided that they are recorded in the proper registry (Royal order of November 15, 1887); but they can not use the services of those who are not registered.—*Regulations of July 13, 1882, article 118.*

not clearly based upon some of the causes mentioned in the foregoing article or if it should not have been presented with the formalities and within the periods fixed in article 619.

ART. 622. After the challenge has been properly presented, the judge shall order that notice thereof be given to the expert challenged, in order that upon the notification he may state under oath, administered by the clerk, whether or not the clause upon which said challenge is based is true.

If he admits the truth of the cause, he shall be considered as challenged without further proceedings, and he shall be replaced by another appointed by the judge.

ART. 623. When the expert denies the truth of the cause of the challenge, the judge shall order that the parties appear before him at the day and hour which he may designate, with the evidence which they may desire to present.

If the challenging party does not appear, he shall be understood to have withdrawn the challenge.

If all the parties litigant appear, the judge shall request them to agree upon the propriety of the challenge, and, in a proper case, upon the appointment of the expert who is to substitute the one challenged.

Should they not come to an agreement, the judge shall admit the evidence which may be submitted, and shall attach the documents to the record, thereupon deciding what he may consider proper.

If the challenge be sustained, the judge shall himself appoint another expert, if the parties should not have designated one by common agreement.

A proper record of the results of these proceedings, which may be attended by the attorneys of the parties, shall be made and signed by all the parties present.

ART. 624. When the challenge of an expert is disallowed, the challenging party shall be adjudged to pay all the costs of this issue.

He may also be adjudged to pay, by way of indemnity, to the party or parties, the amount which the judge may deem proper, not exceeding 500 pesetas.

ART. 625. The parties and their counsel may attend the expert examination and make such suggestions to the experts as they may deem proper.

For this purpose a day and hour shall be set for the beginning of this proceeding, if any of the parties should request it.

When there are three experts, the examination shall be conducted by the three together.

ART. 626. The experts, after conferring with each other, if there are three, shall make their report in writing or orally, according to the importance of the matter, stating their reasons therefor.

In the first case they shall do so in the form of a statement, and in the second case they shall ratify it by an oath in the presence of the

judge; they shall make either report immediately after the examination, and if this should not be possible, upon the day and at the hour which the judge may designate.

ART. 627. The parties or their counsel may request, at the time of the statement or ratification, that the judge require of the expert or experts the explanations which may be proper for the elucidation of the questions.

ART. 628. When there are three experts and they all agree, they shall give or draft their opinion in a single statement signed by all of them.

If they disagree, they shall make as many statements or reports as there are opinions.

ART. 629. The expert examination shall not be repeated, even though the insufficiency of the examination be alleged, or even if a majority or unanimous agreement has not been reached by the experts.

Nevertheless, whenever the judge considers it necessary, he may make use of the privilege granted by article 340, and may order, in the furtherance of justice, that another examination be made, or that the previous one be extended by the same experts, or by others selected by him.

ART. 630. At the instance of any of the parties, the judge may request a report of the proper academy, college, or corporation, when the expert opinion requires special scientific operation or knowledge.

In such case said report shall be attached to the record and it shall produce its effects in the report, even though it should be made or received after the period for the admission of evidence has expired.

ART. 631. The judges and courts shall consider the expert testimony according to the rules of sound judgment, without being obliged to subject themselves to the opinion of the experts.[1]

§ 6.—*Judicial Inspection.*[2]

[1] Although the judge is not subjected to the opinion of the experts, when the expert opinion constitutes a means of evidence, he is obliged, on the contrary, to subject himself thereto if it is the result of an agreement between the parties with regard to any question at issue.—*Decision of October 30, 1878.*

It would be a manifest error to give an obligatory and decisive character to the opinions mentioned in the foregoing article, because they only constitute one of the means of evidence, which is to be analyzed, classified, and weighed by the court.—*Decision of September 29, 1881.*

Art. 630 of the law of Civil Procedure grants full powers to the court to weigh expert evidence.—*Decision of April 19, 1883.*

Courts are not obliged to subject themselves to the opinions of experts, and less so when said reports are deficient.—*Decision of March 7, 1885.*

It is a principle of law sanctioned by various decisions that courts are not obliged to subject themselves to expert opinions, but that they can and must consider the same according to the rules of sound judgment.—*Decision of June 15, 1887.*

See article 657 of this law.

[2] See articles 1240 and 1241 of the Civil Code.

ART. 632. If for the purpose of elucidating and weighing the facts, it should be necessary for the judge to personally examine some place or the thing which is the object of the litigation, a judicial inspection shall be made at the instance of any of the parties.

In order to make this inspection, the judge shall fix, at least three days in advance, the day and hour when it is to take place.

ART. 633. The parties, their representatives and attorneys, may attend the examination and ocular inspection and make such verbal suggestions to the judge as they may deem proper.

Each party may also be accompanied by a person familiar with the object or land. If the judge should deem it proper to receive suggestions or statements from these persons, he shall previously administer to them an oath to tell the truth.

The clerk shall make the proper record of the result of these proceedings, which record shall be signed by the persons present and shall include, in addition, all pertinent suggestions made by either party and the statements of the persons familiar with the matter.

ART. 634. When it is decided to make a judicial as well as an expert examination of a thing, both these proceedings to secure evidence shall be held simultaneously, in accordance with the rules established for each.

ART. 635. The witnesses may be examined at the place of and immediately after the judicial inspection, when the inspection or view of the place contributes to elucidate their testimony, if this should be previously requested by a party in interest.

§ 7.—*Evidence of witnesses.*[1]

ART. 636. None of the parties to an action shall be permitted to submit the evidence of witnesses for the purpose of corroborating the facts proven by judicial confession.[2]

ART. 637. To the instrument requesting the admission of this class of evidence there shall be attached the interrogatory which contains the questions upon which the witnesses are to be examined, with the necessary copies both of the petition and of the interrogatory.

These questions shall be correlatively numbered and stated with clearness and precision, and must be confined to the questions at issue.

ART. 638. The judge shall examine the interrogatory and admit the questions which may be pertinent and reject those deemed irrelevant.

ART. 639. Within the ten days following that of the notification of the order admitting said evidence the person interested shall present a list of his witnesses, giving the name and surnames of each, their trade or profession, their residence and their addresses, if known.

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[1] See articles 1244 to 1248 of the Civil Code.

[2] Courts must not consider the number of witnesses in weighing evidence, but the value which their statements deserve.—*Decision of April 3, 1868.*

These lists may be enlarged within said period.

A copy of the lists shall be given to the opposite party or parties, and no witnesses other than those mentioned therein can be examined.

ART. 640. The litigants may present cross-interrogatories before the examination of the witnesses.

The judge shall approve those that are pertinent and reject all others.

These interrogatories may be presented under a sealed cover, which shall be opened at the beginning of the proceedings for the examination of the witnesses.

Those which are presented unsealed shall be reserved in the custody of the judge under his personal liability.

ART. 641. The judge shall, at least three days beforehand, fix a day and hour at which the examination of the witnesses of each party shall commence.

These proceedings shall take place in open court in the presence of the parties and their counsel, should they attend the same.

ART. 642. Witnesses residing within the judicial district who refuse to voluntarily appear to testify, shall be cited to appear by subpœna at least two days before that fixed for the examination, if the party interested should request it.

The judge may, at the instance of any party to the action, issue such compulsory process against the witness who refuses to appear without just cause as he may consider would tend to compel his appearance, including that of being forcibly brought into court.

ART. 643. The witnesses who may be compelled to appear according to the provisions of the foregoing article, shall have the right to demand of the interested party the assistance or the payment of the indemnity that may be proper.

If there should be no agreement between the interested parties on the subject, the judge shall fix the amount without further remedy, taking into consideration the circumstances of the case, and he shall oblige the solicitor of the party to pay the same as costs in the action, if the witness should make a verbal demand therefor at the hearing in question, or during the next fifteen days.

ART. 644. The litigants may present as many witnesses as they may desire without limitation as to number, but the costs and expenses of all witnesses exceeding six upon each point at issue, shall in all cases be paid by the person presenting such witnesses.

ART. 645. The witnesses shall be examined separately and successively and in the order in which they are named in the lists, unless the judge should consider it proper to change such order.

Witnesses who have testified shall not communicate with the other witnesses, nor shall the latter be present when the former are testifying.

To this end the judge shall, at the request of any of the parties, adopt such measures as he may consider proper.

ART. 646. Before testifying the witness shall take oath in the manner, and subject to the penalties prescribed by law. If the witness professes ignorance with regard thereto, the judge shall inform him of the penalties for the crime of giving false testimony in a civil cause.

An oath shall not be administered to witnesses under fourteen years of age.

ART. 647. Each witness shall be asked:

1. His name and surname, age, status, occupation, and place of residence.

2. Whether he is a relative by consanguinity or affinity, and in what degree, of any of the litigants.

3. Whether he is an employee or servant of the person for whom he appears, or whether he is a partner of, or has any other interests or connection with said party.

4. Whether he has any direct or indirect interest in the action or in another similar action.

5. Whether he is an intimate friend or enemy of any of the litigants.

ART. 648. As soon as the witness shall have answered the questions prescribed in the foregoing article, he shall be examined upon each of those contained in the interrogatory and which have been admitted by the judge, or upon those designated by the person for whom he appears.

He shall thereupon be examined upon the cross-interrogatories, if any have been presented and admitted.

To each of his answers the witness shall give the reasons upon which it is founded.

ART. 649. The witness shall answer orally without the aid of any memorandum.

When the question refers to accounts, books, or papers, he shall be permitted to consult them in order to make answer.

ART. 650. The declarations of each witness shall be written out separately, but one immediately following the other.

The witness may himself read his testimony. Should he not desire to make use of this right, the clerk shall read it, and the judge shall ask the witness whether he ratifies it or has anything to add or change, his answer being written immediately thereafter.

The witness shall thereupon subscribe said declaration, if able to do so, together with the judge, the clerk, and all other parties.[1]

ART. 651. The parties and their counsel can not interrupt the witnesses, nor ask other questions or cross-questions than those set forth in their respective interrogatories.

Only in the event that the witness shall fail to fully answer any question or cross-question, or should contradict himself, or have

[1] Declarations of witnesses not authenticated by the clerk have no legal value.—*Decision of Feb. 20, 1869.*

expressed himself ambiguously, may the parties or their counsel call the attention of the judge to the fact, in order that, should he deem it proper, he may require the witness to make the proper explanations.

The judge may also *ex officio* request of the witness the explanations he may deem proper for the elucidation of the facts upon which he may have testified.

ART. 652. If it were impossible to conclude the examination of the witnesses of one side at one sitting, it shall be continued at the following session of the court or at the one which the judge may designate.

ART. 653. If, for any reason whatsoever, all the witnesses do not appear at the time fixed for their examination, on the petition of the party interested, the judge shall set another day and hour at which they are to appear, and shall notify the parties thereof.

ART. 654. If, on account of sickness or for any other cause which the judge may consider good, some witness can not be present in the court room, his declaration may be taken at his residence in the presence of the parties and their counsel, unless the judge, in view of the circumstances of the case, considers their presence unadvisable.

In such case the parties may examine the declaration in the clerk's office.

ART. 655. When the examination of the witnesses is to be made beyond the place where the action is pending, to the letters rogatory or communication issued for the purpose, shall be attached, in a sealed cover, the interrogatory of questions admitted by the judge hearing the cause.

The judge to whom said letters rogatory are addressed shall open said sealed interrogatory at the time of the commencement of the examination of the witnesses.

ART. 656. If any witness should not speak or understand the Spanish language he shall be examined through an interpreter, whose appointment shall be made in the manner prescribed for the appointment of experts.

ART. 657. Deaf mutes may be admitted as witnesses if, being able to read and write, they can give their declarations in writing.

ART. 658. Judges and courts shall weigh the force of the declarations of the witnesses according to rules of sound judgment, taking into consideration the reasons upon which they are based and the circumstances connected therewith.[1]

Nevertheless, when the law determines the number or the qualifications of witnesses as a formality or special circumstance of the act to which they refer, the provisions for said case shall be observed.[2]

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[1] See article 1248 of the Civil Code.

[2] In order to question the weight of some evidence it is only pertinent to cite, as violated, laws or doctrines which among other circumstances combine the condition of forming part of those explicitly destined to fix the kinds of proof, indicate the value thereof or their efficiency, because those of another character can hardly serve

§ 8. *Challenge of witnesses.*

ART. 659. Each party may challenge the witnesses of the opposite party for any of the following reasons:

1. Relationship of the witness to the party for whom he appears by consanguinity or affinity within the fourth civil degree.

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as an argument against the consideration of evidence, when they can not serve as a guide thereto.—*Decision of March 31, 1865.*

With regard to the proof of the legal existence of a will, courts can not be convinced by the full and rational means which are established for ordinary facts in this article; but they must adjust their judicial criterion to the special rules which the laws establish for the proof of such acts, with regard to the number and qualifications of the attesting witnesses, as well as with regard to the other formalities which are to be observed.—*Decisions of October 26, 1864, and February 6, 1866.*

The rule relating to sound judgment can not be understood as meaning that in the absence of other evidence full faith is not to be given to witnesses who do not state on what they base their answers.—*Decision of December 26, 1878.*

The rule that two reputable witnesses are sufficient to prove the truth of a complaint does not mean that whenever they do attend is the complaint to be declared proven, and much less so when complicated evidence is to be considered. A chamber which disallows the petition of the plaintiff does not violate the law of civil procedure.—*Decision of May 4, 1880.*

According to article 658 of the law of civil procedure, "judges in weighing the evidence of witnesses are allowed a reasonable liberty in order to form their opinions, without considering the number, but only the value of the testimony, weighed in accordance with the rules of sound judgment.—*Decision of June 23, 1881.*

This article is not applicable when the decision is not based on the evidence of witnesses, but on documentary evidence.—*Decision of April 3, 1879.*

It is not a principle of law nor a rule of sound judgment that the statements of witnesses not challenged are to be accepted in their entirety, because this claim would be contrary to the reasonable liberty which the law grants to judges and courts in weighing the evidence of witnesses.—*Decision of November 18, 1881.*

Law 2, Title XVI, Book XI, of the *Novísima Recopilación* relating to evidence has been repealed by the law of civil procedure, as the Supreme Court has repeatedly declared.—*Decision of June 30, 1865.*

Laws 32, 40, and 41, Title XVI, Partida 3, relating to the value of the evidence of witnesses have been repealed by article 317 of the former law of civil procedure and by article 659 of the present law (658 of the law for Cuba and Porto Rico).—*Decision of December 21, 1881, and many others.*

The following laws of the same title and partida have also been repealed: Law 22 (*Decision of June 15, 1880*); law 4 (*Decisions of June 11, 1879, and April 17, 1880*); laws 28 and 29 (*Decision of October 19, 1879*), and also law 16 of Title XXXII (*Decision of December 5, 1879*), and laws 1 and 8 of Title XIV of the same partida (*Decision of October 29, 1879*). Finally, by decisions of March 13 and 22, 1889, it is stated that the laws of the Partidas relating to the evidence of witnesses have all been repealed by the law of civil procedure.

Notwithstanding this decision the Supreme Court declared (*Decision of February 20, 1861*) that the last part of law 32, Title XVI, Partida 3, which declares that a complaint can not be considered proven by the testimony of a single witness, is still in force.

An appeal for annulment of judgment can not be based on a violation of article 658 of the law of civil procedure, if at the same time there are not stated the rules of sound judgment which the adjudging chamber has not considered in weighing the evidence of witnesses.—*Decision of December 5, 1882.*

2. That the witness at the time of giving his testimony is a partner, employé, or servant of the party for whom he appears.

For the purposes of this provision, a servant or employé shall be considered the person who lives in the house of the litigant and performs therein mechanical services for a fixed salary; and an employé, a person who habitually renders for the litigant remunerated services, although not living in his house.

3. That the witness has a direct or indirect interest in the action or in another similar action.

4. That the witness has been condemned for giving false testimony.

5. That the witness is an intimate friend or an open enemy of one of the litigants.[1]

ART. 660. Within four days after the evidence of the witnesses for one party has been taken, any one of them may be challenged by the opposite party, when any of the causes mentioned in the foregoing article are attendant and such fact had not been acknowledged in his testimony.

ART. 661. In the instrument alleging the causes for challenge the proof thereof shall be presented in a supplementary statement.

If proofs are not presented it shall be understood that the challenge is withdrawn.

ART. 662. The party in interest may object to the causes of challenge within the three days following that upon which a copy of the written challenge is served upon him.

He may also, by means of a supplementary statement, submit the evidence in his favor, and should he not do so, it shall be understood that he withdraws the same.

ART. 663. If neither of the parties submits proof of the cause for challenge, such challenges shall be attached to the record without further proceedings and shall be considered at the proper time.

If they have offered proof, the judge shall admit that which is pertinent, and shall order that the evidence be taken.

ART. 664. The evidence relating to causes of challenge shall be presented during the time remaining of the second period for the taking of evidence.

If there be not sufficient time therefor, the judge may extend it for this purpose only, for the period he may consider necessary, but in no case can the extension exceed ten days.

ART. 665. The evidence relating to causes of challenge shall be attached to the record of the principal evidence for the proper final effects.

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[1] See article 1247 of the Civil Code relating to the legal disqualification to be a witness, and to which article this one is subordinated.

The Supreme Court has declared hereon that a challenge interposed by reason of relationship is subordinated to the provisions of law 9, Title VIII, Book II, of the "Fuero Real," when the relationship is to both litigants.—*Decision of October 3, 1868.*

SECTION VI.—*Final pleadings, hearings, and judgments.*

ART. 666. After the period for the taking of evidence has expired, or after all the evidence submitted has been taken, without any action on the part of the interested parties, or without taking account of their action should they take any, the judge shall order that the evidence taken be attached to the record, giving notice thereof to the parties.

ART. 667. The party who prefers to argue his case orally instead of in writing must, within three days after notice of the order mentioned in the preceding article has been served, present a petition for a public hearing.

ART. 668. The three days having passed without any of the parties having requested a public hearing, the judge shall order that the original record be delivered to each of the parties, in their order, so that they may make their final pleadings and file a written brief of the evidence.

For this purpose there shall be granted to each party a period not less than ten nor more than twenty days. Only in case that, owing to the volume or complicated character of the evidence, the judge shall consider it necessary, he may extend said time, at the instance of a party, to thirty days, which period can not be extended.

ART. 669. The final pleadings shall be limited to the following:

1. In numbered paragraphs there shall be stated, with clearness and with the greatest possible conciseness, each one of the facts which have been the object of the contention, making a short and methodic brief of the evidence which, in the judgment of the each party, sustains or disproves them.

2. In paragraphs, also brief and numbered, and following the same order as that of the facts, the evidence of the opposite party shall be discussed.

3. The principles of law respectively alleged in the complaint and answer, and, in a proper case, in the replication and rejoinder, shall be fully and concisely stated, if contended for in whole or in part.

There may also be stated other laws or principles of law upon which a decision of the questions at issue in the cause may be based; but they shall be confined to a citation thereof, without comment or argument other than to show the positive character in which they are considered pertinent to the question at issue.

Without further argument the case shall be submitted for judgment

ART. 670. The final pleadings shall be attached to the record the copies prescribed being furnished to the other parties to the actior

ART. 671. As soon as the period granted for the final pleadings has expired, the record shall be recovered from the party in possession thereof upon the request of the opposite party, with or without the final pleadings, and the proper action shall then be taken.

ART. 672. After the record has been returned by the defendant, or recovered by compulsory process, the judge shall order that it be considered closed, and that it be brought before him for judgment, with a citation of the parties.

ART. 673. In the case of article 667, a copy of the petition for a public hearing shall be given to the opposite party, in order that within two days after the delivery of the copy of the petition he may fully and concisely state, and without argument, whether or not he agrees to said petition.

Said copy shall not be served when both parties join in the request.

ART. 674. The judge shall order that a public hearing be granted when all the parties to the action so request.

Should there not be this agreement, the judge shall grant or deny the request, as he may deem best, taking into account the nature and importance of the action.

There is no further remedy against the order of the court on this subject.

ART. 675. When the judge refuses to grant a public hearing he shall, in the same decision, issue the orders prescribed in article 668.

Should he grant a public hearing, he shall order that the record be delivered to each of the parties in their order for their examination, for a period which shall be not less than ten days nor more than twenty days, which period can not be extended.

In such case no final pleadings shall be made, nor shall the parties be permitted to file any other written allegations, being obliged to confine themselves to the statement that they have the information required to proceed with the hearing.

ART. 676. After the record has been returned or recovered, in a proper case, the judge shall order the citation of the parties for judgment, and shall fix as early a date as possible within the next eight days for the hearing.[1]

At this hearing the counsel for the litigants who may appear shall be heard orally.

ART. 677. The judge shall render judgment and make it public within twelve days after the hearing, or the citation, in the case of article 672.

This period may be extended to fifteen days, if the length of the record exceed one thousand folios.[2]

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[1] When citation for judgment is not made an appeal lies for breach of form, and not for breach of law.—*Decision of October 17, 1883.*

[2] A judgment is not final which not only does not put an end to the action, but designates where it may be continued and where the rights alleged may be argued.—*Decision of January 20, 1883.*

The reservation of rights made in a judgment can not be said to give or deprive persons of rights.—*Decision of March 17, 1883.*

A decision which does not adjudge without evidence does not violate this law.—*Decision of April 10, 1883.*

ART. 678. If an appeal be taken from a final judgment at the proper time and in the proper manner, the judge, without any further proceedings, shall admit the same both for review and a stay of proceedings, and shall order that the record be transmitted to the higher court, the solicitors of the parties being cited to appear before said court within twenty days after the date of the citation.

The clerk shall include the notice and the citation in a single writ, and shall, within the six following days, transmit the record to the higher court at the cost of the appellant.[1]

CHAPTER III.—ACTIONS OF LESSER IMPORT.

ART. 679. The proceedings in actions of lesser import shall be prosecuted according to the rules established for an ordinary action of greater import in so far as not opposed to the special procedure prescribed in the following articles.

ART. 680. After the complaint has been filed with the documents and the necessary copies thereof, said complaint shall be served on the defendant or defendants, with a summons to appear and make answer thereto within nine days.

ART. 681. The summons shall be made in the manner prescribed for notices, substituting the writ prescribed in article 274 with a copy of the complaint.

There is no breach of law when a chamber considers documentary and other evidence together.—*Decision of April 30, 0883.*

Principles of law relating to public instruments and to their efficiency as proof are not violated when the court, acknowledging the facts certified to therein, afterwards considers the efficacy of said facts according to the other data and reasons upon which the litigation is based.—*Decisions of November 14 and 20, 1883, and March 11, 1886.*

Whenever a decision is rendered in favor of the plaintiff, it is naturally understood thereby that the exceptions pleaded by the defendant are disallowed.—*Decision of April 18, 1884.*

An adjudgment to pay losses and damages must be preceded by the affirmation or declaration of the existence of said losses and damages.—*Decision of June 10, 1881.*

In order that an appeal for annulment of judgment may be taken for an error in law in the consideration of evidence, it is an indispensable requisite that some law or legal principle relating to the value and efficacy of said evidence and to the manner and form of considering or weighing the same be cited and be violated.—*Decision of April 2, 1887.*

The evidence shall be weighed by the adjudging court, and its decision must be observed until it is proven that an error of fact or of law has been committed, founded on a document or authentic instrument which proves the error of the court, or which is in evident contravention of a law or principle of law which it is necessary to cite.—*Decisions of June 22, July 7 and 11, 1887.*

[1] After an appeal has been taken and is duly entered, the lapse of the period prescribed for the taking of this appeal is interrupted. If interposed without the signature of an attorney, although it can not be acted upon until this defect is cured, it must be admitted as soon as cured, otherwise giving to the law an interpretation in contradiction of the legal principles set forth.—*Decisions of December 17, 1859, February 29, 1860, and September 14, 1861.*

ART. 682. When, on account of the domicile of the defendant being unknown, it is necessary to notify and summon him by edicts in the manner prescribed in article 269, a period of nine days for appearance in action shall be fixed.

If he should appear, he shall be granted six days within which to make answer, and upon being notified of this order a copy of the complaint and of the documents, in a proper case, shall be delivered to him.

ART. 683. When there are two or more defendants they may jointly or separately make answer to the complaint within the period prescribed in article 680, which shall be common for all.

If any document exceed twenty-five sheets, a copy thereof need not be attached, and the original must be delivered. If the defendants can not litigate jointly, the first of them shall be granted the period above mentioned and six days to each one of the others.

ART. 684. Whatever be the form in which the summons was served, if the defendant does not appear within the period designated, he shall, at the instance of the plaintiff, be declared in default, and the complaint being considered as answered, the action shall proceed on its course, notice of said order as well as all others which may thereafter be made being made within the limits of the court-room.

ART. 685. If the defendant believes that an action of lesser import is not the proper action, he may employ the remedy granted him by article 491 within the four days following the summons to make answer to the complaint.

ART. 686. The defendant shall in his answer plead all the exceptions he may have in his favor, dilatory as well as peremptory, and the judge shall pass upon all of them in the judgment, but he shall abstain from deciding upon the main issue if he considers any of the dilatory exceptions well taken.[1]

ART. 687. If the defendant should present a counterclaim, it shall be referred to the plaintiff in order that he may make answer thereto within four days, which shall be limited to the allegations of said counterclaim.

ART. 688. If the counterclaim should involve an issue which must be heard in an action of greater import, the judge shall refuse to entertain the same *eo instanti* and without further remedy, without prejudice to the right of the defendant, which he may enforce in the proper action.

ART. 689. The litigants shall state in their respective pleadings whether they admit or deny the allegations contained in the complaint or counterclaim.

Silence or evasive answers shall be considered in the judgment as an acknowledgment of the facts to which they relate.

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[1]This precept is applicable to actions of unlawful detainer.—*Decision of December 19, 1884.*

ART. 690. If the parties should agree as to the facts, and no disputed allegations of fact are made, the question shall be reduced to an issue of law, and the judge shall, within the two days following the presentation of the answer, order that the parties be cited to appear, fixing as early a day and hour as may be possible within the six days following.

At this appearance the judge shall hear the parties or their solicitors or counsel, should they attend the proceedings, and shall render judgment within three days.

ART. 691. The proceedings shall not be suspended on account of the nonappearance of any of the litigants, hearing in such case the one who appears.

If none of the parties appear at the hour and on the day fixed, an entry of the fact shall be made, and the judge shall consider the proceedings closed and render judgment thereon within the period aforementioned.

As soon as appearance is made, the proper record thereof shall be made, in which shall be succinctly entered what the parties may have alleged, which shall be signed by the judge, the clerk, and the persons interested.

ART. 692. If the parties should not agree as to the facts, or, if agreed to, others are alleged against the plaintiff by the defendant, the judge shall order that evidence be taken requiring of each that within the period of six days, which time can not be extended, they submit that which is to their interest.

After said period no new nor additional evidence can be submitted.[1]

ART. 693. The documents included in some of the subdivisions of article 505 are excepted from the foregoing prohibition.

The presentation of such documents may be made in first instance during the period for the taking of evidence, and afterwards until the citation for appearance is made; in second instance, until a day is set for the hearing.

ART. 694. After the expiration of the six days without any of the parties submitting any evidence, the judge, proceeding according to the prescriptions of articles 690 and 691, shall order the parties cited to appear, and he shall render judgment within three days thereafter.

[1] The lack of personality in any of the parties in a cause does not give ground for an appeal for an annulment of judgment as to the principal action, and can only be alleged as a basis for an appeal for breach of form, as determined by article 693 of the law of civil procedure.—*Decision of November 30, 1888.*

In order that an appeal for an annulment of judgment for breach of form be admitted, it is indispensable that the petition for curing the defect that is supposed to have been committed should have been filed at the proper time, utilizing the ordinary remedies which for this purpose are granted by the law.—*Decision of October 10, 1888.*

ART. 695. If both parties or either of them should have submitted evidence, the judge shall fix a period within which it is to be taken.

This period can not exceed twenty days.

ART. 696. Notwithstanding the provisions of the foregoing article, if any of the testimony is to be taken in a place other than that in which the cause is being tried, the judge, taking into consideration the distance and means of communication, may extend the period the number of days necessary, when he considers that it is not possible to take the evidence within the ordinary period. This extension can not exceed ten days.

In such case the other proceedings for the taking of evidence shall be performed within the period fixed in the foregoing article.

ART. 697. An extraordinary period for the taking of evidence may also be granted in the cases and with the requisites prescribed in articles 554 to 561.

ART. 698. Evidence shall be taken in the manner prescribed for declaratory actions of greater import.

ART. 699. Each party, within the period fixed for the taking of evidence, may challenge the witnesses presented by the opposite party for the causes and in the manner prescribed for declaratory actions of greater import, the extension of the period granted by article 664 being reduced in a proper case to five days.

ART. 700. Upon the day following the period for the taking of evidence, or as soon as all testimony submitted has been taken, the judge shall *ex officio* order that it be attached to the record and the parties be cited to appear, the evidence in the meantime being placed in the clerk's office for examination; after the hearing, should the interested parties appear, the judge shall render judgment within five days.

ART. 701. Judgments rendered in actions of lesser import may be appealed from for review and for a stay of proceedings.

ART. 702. If an appeal is filed during the course of these actions, the judge shall consider the appeal as interposed at the proper time, without thereby interrupting the course of the action.

In such case the appeal must be retaken at the same time as the appeal from the final judgment, and both appeals shall be admitted for a review and stay of proceedings.

There must also be interposed in a proper case, at the same time, the appeal for annulment mentioned in article 494, and it shall be admitted with the other before the audiencia of the judicial district, provided it is prepared at the proper time.

ART. 703. After the appeal and the application for annulment, in a proper case, have been allowed, the record shall be forwarded to the audiencia, the parties being summoned to appear ten days thereafter before said audiencia, so that, should they so desire, they may allege their rights.

ART. 704. After the record has been received by the audiencia, and the appellant has appeared in person or through a solicitor, within the period fixed in the summons, the record shall be referred to the relator for a period of six days, in order that he may make an abstract thereof as concise as possible.[1]

ART. 705. During the six days mentioned in the foregoing article the appellee may, in writing, agree to the appeal with regard to such points of the judgment which he may consider prejudicial, without stating his reasons therefor. A copy of said instrument shall be attached to the original to be furnished to the appellant.

ART. 706. Within the six days aforementioned, any of the parties may petition that evidence in the case be taken, if any of the causes should be attendant in which article 861 permits it, stating in the same instrument the evidence that is to be taken.

The chamber shall at once decide what it deems proper. If it permits evidence to be submitted, it shall fix a period which can not be extended which it may consider necessary to take the evidence, but the period can not exceed twenty days.[2]

ART. 707. After the brief has been prepared, and in a proper case the evidence is united to the record, the latter shall be delivered to the ponente for a fixed period, not to exceed six days, for his examination.

ART. 708. As soon as the ponente has examined the record a day shall be set for the hearing, and the parties shall be cited to appear for judgment.

Four days shall intervene between the citation and the hearing, during which time the record shall remain in the office of the secretary in order that the parties may examine it and take copies of the abstract, should they so desire.

ART. 709. Five days after the hearing, at which the parties, their solicitors or attorneys, may discuss the facts only, judgment shall be rendered affirming or reversing the judgment appealed from or deciding in a proper case what may be proper with regard to the annulment and other questions submitted for decision to the chamber.

A judgment which affirms or which increases that renderd in the first instance must include the taxation of costs against the appellant.

ART. 710. If the appellant does not appear within the period fixed in the summons, the chamber shall *ex officio* order that the record be

[1] If in the order the chamber does not fix the period of six days, and in consequence thereof it is believed that an action of greater import is in question, and the proceedings are prosecuted as such, when the error is discovered the action should be returned to its status when the order was made; and if the chamber does not so proceed, and prevents the taking of evidence, an appeal for annulment of judgment lies.—*Decision of July 8, 1885.*

[2] If the testimony was not prepared in the instrument referred to in this article, but afterwards, the appeal for annulment of judgment is not admissible on the ground of its not having been admitted.—*Decision of June 23, 1888.*

returned to the judge of first instance, in order that the judgment be executed and that the costs of the transmission of the appeal be paid by the appellant, for which purpose the amount of said costs shall be noted in the letter returning the record.

ART. 711. The nonappearance of the appellee in the audiencia shall not be an obstacle to the continuation of the proceedings in his default.

ART. 712. When the judgment appealed from has been affirmed or reversed, the record shall be returned to the judge of first instance with a certificate of the decision and with taxation of costs, if such have been ordered, for their execution and enforcement.

ART. 713. After the records have been received by the court of first instance, the proceedings prescribed in the title for the execution of judgment, shall be observed.

CHAPTER IV.—ORAL ACTIONS.[1]

ART. 714. Municipal judges are the only ones competent to take cognizance in oral actions of all causes of action in which the amount

[1] In place of this article see the royal order of September 20, 1891, which is given herewith:

1. In towns in which there are two or more municipal judges, each shall take cognizance of the matters appertaining to his district, in accordance with the provisions of article 435 of the law of civil procedure, and subject to the rules of competency established in articles 62, 63, and 1560, without the parties being permitted to submit either in an implied or express manner to one of them to the exclusion of the other.

2. Municipal judges shall not proceed with any matter the cognizance of which pertains to another district, and shall not issue any order therein except one transmitting the papers or petitions to the competent court.

Letters rogatory shall be executed by the judges in whose districts the proceedings referred to in the commission are to be fulfilled.

3. Judges of first instance, in taking cognizance of appeals, and chambers of justice in deciding questions of competency, shall, in a proper case, impose the disciplinary corrections established in the law of civil procedure upon the secretary of the municipal court, who should not have entered in a statement the circumstances determining the competency, or upon the municipal judge if, said circumstances having been entered, he shall not duly consider them.

4. In every municipal court of a town in which there are two or more of said courts, there shall be kept a register of all oral actions and proceedings to avoid litigation which may be held, in which there shall be entered the date of the proceedings or act, the purpose thereof, the names of the plaintiff and of the appellant, their domiciles, the street, place, or location of the estate, whon the action involves a real action, and any other data which may be necessary to determine the competency.

5. For the purposes of said register municipal judges shall furnish a daily report to the presiding judge of the territorial audiencia of the oral actions and proceedings to avoid litigation (*actos de conciliación*) which may have been had, stating the details referred to in the foregoing number and the result of each proceeding or action.

6. The presiding judges of the audiencias shall observe the greatest care to secure a proper fulfillment of the foregoing provisions, utilizing for this purpose the powers granted them by the organic law of the judicial service.

involved does not exceed 1,000 pesetas, although the claim is based on a document importing a confession of judgment (*fuerza ejecutiva*).

ART. 715. The following are excepted from the foregoing article:

1. Interventions or interpleaders and other proceedings incidental to another action, in which case the provisions of article 487 shall be observed.

2. Reconventions in actions of greater or lesser import, which shall be heard and decided according to the provisions of articles 543 and 687.

ART. 716. When the municipal judge considers himself incompetent to take cognizance of an action owing to the nature of the case or the amount involved, he shall make a ruling to this effect immediately following the complaint and on the same paper, and advising the plaintiff to allege his rights before the proper judge and in the proper manner.

An appeal from this ruling may be taken for review and a stay of proceedings to the judge of first instance of the judicial district.

ART. 717. When the defendant does not agree as to the amount involved in the action the provisions of article 495 shall be observed.

ART. 718. The hearing and decision of these actions in first instance shall be had by the appearance of the parties before the municipal judge in accordance with the following articles.

ART. 719. The complaint shall be presented on ordinary paper and shall contain:

The names, domicile, and profession or trade of the plaintiff and of the defendant or defendants.

The subject of the complaint.

The date of the presentation of the complaint to the court.

The signature of the person presenting it or of a witness at his request, if he were unable to sign his name.

The plaintiff shall present as many copies of this complaint, subscribed in the same manner, as there may be defendants.

ART. 720. When the complaint, together with the copies, has been presented, the municipal judge within two days shall enter thereon an order summoning the parties to appear, fixing a day and hour for that purpose, in accordance with the provisions of article 725.

This order shall be communicated to the plaintiff.

ART. 721. The citation of the defendant to appear shall be made by the secretary or bailiff of the court by delivering to him a copy of the written complaint, on which instrument, immediately after the complaint, the secretary shall draft the writ of citation, stating the date of the order and the day, hour, and place fixed for the appearance, with the admonition that the action will be heard in his default if he does not appear.

ART. 722. The service of the complaint and citation of the defendant

shall be entered on the order by means of a memorandum which the defendant shall sign, or a witness at his request, should he be unable to do so. If the defendant is not found at his domicile, the memorandum shall be signed by the person who receives it, observing the prescriptions of articles 263 and 268.

ART. 723. When the defendant resides at a place other than the residence of the municipal judge who summons him, an official communication shall be sent to the judge of the place where he may be found, accompanied with a copy of the complaint and the writ of citation, in order that the latter may be served. After the communication, which shall be returned without delay to the judge who issued the request, shall be entered an account of the service of the copy and the citation.

ART. 724. When the domicile of the defendant is unknown, the citation shall be made by means of edicts, posted at the place where the action is pending, and at his last place of residence, in which case the judge may extend the time for the appearance, but not to exceed the period of twenty days.

The edicts shall also be published in the official periodicals whenever the judge considers it necessary.

ART. 725. Between the citation and the appearance a period of time not less than twenty-four hours nor more than six days must intervene.

In the cases in which the defendant does not reside at the place where the action is pending, this period shall be extended one day more for every 20 kilometers of distance.

ART. 726. After the time for the appearance is set it can not be changed except for good cause, alleged and proven before the municipal judge, or by a mutual agreement between the parties.

ART. 727. Should the plaintiff not appear at the day and hour fixed, he shall be considered to have abandoned the action, he being adjudged to pay all the costs and to indemnify the defendant, who may have appeared, for the losses he may have suffered.

In the record which may be made, the judge, after hearing the defendant, shall, without further remedy, fix the amount of such damages at a reasonable figure, which can not exceed 125 pesetas, unless the defendant should waive his right thereto. If no waiver is made, it shall be recovered with the costs by compulsory process.[1]

ART. 728. Should the defendant not appear the action shall proceed in his default, without a further citation.

ART. 729. The appearance shall be had before the judge and secretary on the day set.

At said appearance the parties in their order shall allege their claims and rights, and afterwards the pertinent evidence which they

[1] The nonappearance in oral actions is not an essential form of the action enumerated in article 1691.—*Decision of June 11, 1885.*

may submit shall be admitted, the documents being attached to the record.

At this appearance any person selected by the parties in interest may accompany and speak for them.

A proper record of the appearance shall be made, which shall be signed by all the persons present and those who have testified as witnesses.

ART. 730. After the appearance, the judge shall, on the same or the following day, enter final judgment at the end of the record.

If the defendant should institute a demand in reconvention for an amount exceeding 1,000 pesetas, the judge in the same judgment shall make the reservation of rights prescribed in rule 4 of article 63.

ART. 731. This judgment may be appealed from both for review and stay of proceedings to the judge of first instance of the judicial district, in which the municipal court is situated.

The appeal may be taken when notice of the judgment is served, in which case the secretary shall make entry thereof in the proceeding, or within the next three days by appearing before the municipal judge.

ART. 732. When the appeal is admitted, the record shall be transmitted to the judge of first instance and the parties shall be summoned to appear, if they so desire, within eight days, in order to allege their rights.

ART. 733. Should the appellant not appear within said period, the appeal shall be dismissed, with costs taxed against him, the record being ordered returned *ex officio* to the municipal court for the execution of the judgment.

ART. 734. Should the appellant appear within said time, which appearance shall be recorded, the judge of first instance shall order the parties to be cited to appear on the day and hour designated by him, proceeding according to the rules hereinbefore established.

Should the appellee not appear, the citation shall be served upon him by posting it within the limits of the court-room.

ART. 735. After the appearance is recorded, or a notice of nonappearance of the parties has been entered, on the same or the following day, the judge shall render final judgment, affirming or reversing the judgment appealed from, taxing the costs against the appellant in the first case, or issuing, in a proper case, the order of nullity prescribed in article 495.

There shall be no remedy whatsoever against this judgment.

ART. 736. After the judgment has been rendered, the record shall be returned to the municipal court within two days, with a certified copy thereof for its execution.

When there has been an adjudgment upon costs, the clerk shall enter a detailed statement thereof at the foot of the certified copy, for their recovery, if they have not been paid.

ART. 737. After the certified copy with the record has been received by the municipal court, the procedure for the execution of judgments shall be observed, but the periods of time shall be so reduced that in no case shall they exceed one-half the time of those therein established.

ART. 738. If an intervention of ownership or better right be interposed during the execution of the judgment relating to the property attached, the same municipal judge shall decide the question according to the procedure prescribed for oral actions, when the value of the property claimed does not exceed 1,000 pesetas.

Should it exceed this amount, the demand in intervention must be presented to the court of first instance in order that it be heard according to the procedure prescribed for declaratory actions.

In such case the judge of first instance shall order the municipal judge to suspend all proceedings before him until judgment in the intervention is rendered, if the intervention related to ownership; and if to a better right, the judge shall be ordered to deposit the proceeds of the sale of the property, if sold, in a public depository.

ART. 739. If, in any of these actions, any of the litigants request to be allowed to litigate as a poor person, the municipal judge shall hear and determine this issue according to the procedure prescribed for oral actions, hearing the municipal fiscal who shall be cited to appear for this purpose, and taking into consideration the rules prescribed in articles 15 et seq. in determining the incidental issue.

TITLE III.

INCIDENTAL ISSUES.

ART. 740. Incidental issues which must be decided before the main issue can be proceeded with, which may be raised in any kind of an action, except oral actions, and for which no special procedure is prescribed in this law, shall be heard and determined according to the procedure prescribed in this title.[1]

ART. 741. Such questions, in order to be classified as incidental issues, must be immediately related to the main question which is the object of the action in which they are raised, or with the validity of the procedure.[2]

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[1] An issue raised after the termination of an action, and not during the course thereof, can never be considered as an issue incidental to an action.—*Decision of May 27, 1890.*

[2] Until the complaint has been admitted, the plaintiff has no personality to raise issues incidental to the question.—*Decision of May 23, 1861.*

As article 740 of this law is limited to the definition of incidental issues, which are the questions raised during the progress of an action and which are related to the main issue or to the validity of the procedure, the judgment which decides the incidental issue raised by a party, and heard and decided according to all the formalities of Title 3 of Book 2 relating to the nullity of the proceedings employed in the execution of the judgment, far from violating the article cited gives thereto its full force of procedure.—*Decision of February 16, 1889.*

ART. 742. Judges shall ex officio reject incidental issues not included in the provisions of the foregoing article, without prejudice to the right of the parties who have raised said issues to raise the same question in the proper manner.

A motion for a rehearing may be interposed against this order of the court, and, if not entertained, an appeal lies for a review of the proceedings.

ART. 743. The incidental issues which, requiring a previous decision, are an obstacle to the continuation of an action, shall be heard and determined in the same proceedings, the course of the principal action being meanwhile suspended.

ART. 744. In addition to the incidental issues expressly mentioned in the law, the following shall be considered as included within the provisions of the foregoing article:

1. Incidental issues which refer to the annulment of the proceedings or of any order of the court.

2. Incidental issues which relate to the personality of any of the litigants or his solicitor, based upon facts arising after answer to the complaint was made.

3. Any other incidental issue arising during the course of the action, without the previous decision of which it would be absolutely impossible, *de facto* or *de jure*, to continue the main action.

ART. 745. Incidental issues which do not suspend the prosecution of the main action shall be heard and determined separately upon a separate record, without suspending the course of the principal action.

ART. 746. The separate record shall be prepared at the expense of the party who may have raised the incidental issue and shall contain:

1. The original document in which the incidental issue was raised, or a certified copy thereof and the necessary part of the order, if it contains other claims.

2. The original documents relative to the incidental issue which may have been presented therewith.

3. A transcript of such parts of the main record as the party which raises the incidental issue may designate, including therein also the portions which the opposite party requests to be added thereto, if the judge considers them pertinent.

ART. 747. Such designation must be made by the party raising the incidental issue within three days after that of the notice of the ruling of the court ordering that a separate record be made, and by the opposite party within the three days following, for which purpose the record shall be placed in the office of the clerk for examination.

If such designation be not made within said periods, the clerk shall at once prepare the separate record with the petition and documents mentioned in numbers 1 and 2 of the foregoing article.

In every case a memorandum of the making of the separate record

shall be entered upon the main record, and in the separate record a statement to the effect that the solicitors of the parties have power to act for them in the latter.

ART. 748. When an incidental issue has been interposed, and the separate record has been prepared, in a proper case, it shall be referred to the opposite party for a period of six days, in order that he may make a special answer to the incidental issue.

Should there be several litigants the same period shall be granted to each of them in their order.

The provisions of article 514 et seq. shall be observed in the filing and delivery of copies.

ART. 749. In the document raising an incidental issue and in that containing the answer thereto, the parties shall, if they consider it necessary, request that evidence be taken.

ART. 750. If none of the parties should request that evidence be taken the judge shall, without further proceedings, order that the record be submitted to him for judgment, to which the parties shall be cited to appear.

ART. 751. Evidence shall be taken in the incidental issue:

1. When all litigants have requested it.

2. When but one of the parties having requested it, the judge considers it proper.

ART. 752. The period for the taking of evidence in incidental issues shall not be less than ten nor more than twenty days.

This period shall be common for the offering and the taking of evidence, and in other respects the provisions for declaratory actions shall be observed.

ART. 753. An extraordinary period for the taking of evidence shall be granted only for such incidental issues as are heard and determined in a separate record, and in those mentioned in number 2 of article 745.

ART. 754. The time for the taking of evidence having expired, the judge, without the necessity of the persons interested requesting it, shall order that the evidence taken be attached to the record, and that a hearing for judgment be had, with a citation of the parties.

ART. 755. Both in the case of the foregoing article and in that of article 750, the judge shall fix the first day possible for such a hearing if any of the parties request it during the two days following that of the citation.

At such hearing the court shall hear the counsel of the parties, if present.

ART. 756. In the case of the foregoing article, the evidence shall be placed in the clerk's office for examination for the period from the day set for the hearing until the hearing is concluded.

ART. 757. The judge shall render judgment within five days after the hearing, or after two days following that of the citation without its having been requested.

This judgment may be appealed from, both for a review of proceedings and for stay of execution.

ART. 758. The foregoing provisions shall be applicable to incidental issues raised at second instance and in appeals for annulment of judgment.

A petition for a rehearing before the same chamber may be made with regard to the judgments rendered therein.[1]

ART. 759. Within three days after the delivery of the copy of the petition for a rehearing to the other parties they may file such answer as they may consider proper.

At the expiration of said period the chamber, after receiving a report from the justice ponente and without further proceedings, shall render the decision it deems proper.

ART. 760. The only remedy against decisions of audiencias on said petitions for a rehearing shall be an appeal for annulment of judgment, in the cases expressly determined in this law.

Against those rendered by the supreme court there is no remedy whatsoever.

TITLE IV.

PROCEEDINGS IN DEFAULT.

ART. 761. From the time when the defendant has been declared in default, in addition to observing the provisions of article 281, there shall be ordered, if the opposite party so requests it, the seizure of all kinds of personal property and an attachment of the real property to the amount considered necessary to insure that which is the object of the action.[2]

ART. 762. The personal property seized shall be permitted to remain in the possession of the person in whose care or possession it may be found, whether he be the defendant or a third person, provided that, in the opinion of the judge, he possesses sufficient real estate to answer therefor.

Should this not be the case, and if not furnished when demanded, the personal property shall be placed in deposit at the cost and risk of the litigant in default.

ART. 763. The attachment of real property shall be made by issuing orders in duplicate to the proper register of property to enter a cau-

[1] A petition for a rehearing may, before the same chamber, be made with regard to decisions relating to incidental issues raised in the second instance, and if said petition be not made no appeal for annulment of judgment can be taken.—*Decisions of January 9, 1884, and December 7, 1888.*

[2] Even in actions proceeded with in default, although the defendant should not have appeared to plead exceptions, the court may decide what it may deem proper according to the result of the proceedings.—*Decision of January 11, 1886.*

tionary notice against the property, with absolute prohibition to sell, pledge, or encumber the same.

One copy of said order, after being executed, shall be attached to the record for the proper purposes.

ART. 764. The seizure or attachment made as a result of a declaration of default shall continue in force until the conclusion of the action.

ART. 765. Whatever may be the status of the action when the party in default appears, he shall be admitted as a party thereto and the action shall continue without retrogression in any case.

ART. 766. Should the defendant appear after the expiration of the period for the taking of evidence in the first instance, or during the second instance, his evidence shall be received at second instance, should he request it and if the issue be one of fact.[1]

ART. 767. Said party may also petition that the seizure or attachment of his property be raised, if he alleges and clearly proves that he was unable to appear in the action on account of insuperable *force majeure*.

This petition hereon shall be heard and determined in a separate record as an incidental issue without suspending the course of the main action.

ART. 768. Notice of judgment rendered in the proceedings in default shall be served upon the party in default if he can be found, should the opposite party demand it. Otherwise he shall be notified in the manner prescribed in articles 282 and 283.

The edicts shall contain only the title and the essential part of the judgment, with the signature of the judge who rendered the same, and they shall be published in the *Gaceta* of the general Government and in the *Boletin Oficial* of the province, if there be one.

Said edicts shall also be published in the *Gaceta de Madrid* when, in the opinion of the judge, the circumstances of the case require it.

ART. 769. The provisions of the foregoing article shall be applicable to the notification, and, in a proper case, to the publication by edicts of final judgments rendered in second instance.

ART. 770. The litigant in default, who has been personally notified of the final judgment, can appeal therefrom or request an annulment of judgment, if proper, only within the legal period.[2]

ART. 771. The litigants in default, who have not been personally notified of the judgment, may also avail themselves of the same remedies.

In such case the legal period in which to utilize the same shall com-

[1] This article and the previous one take as granted that the evidence in the case was taken in the first instance, and as this is not done in an executory action they naturally are not applicable thereto.—*Decision of October 1, 1884.*

[2] Notwithstanding the provisions of this article, a litigant in default may avail himself of the other remedies and incidental issues which may be utilized according to law.—*Decision of December 20, 1886.*

mence from the day following the publication of the judgment in the *Boletin Oficial* of the province, when there is one, and in its absence in the *Gaceta* of the general Government.

ART. 772. The defendants who have remained constantly in default and are not included in any of the cases of the two foregoing articles may be granted a hearing against the final judgment which terminated the action, in order to secure its rescission and a new judgment in the special cases prescribed in the following articles.

ART. 773. A defendant who has been personally summoned, and who for nonappearance in the action has been declared in default, shall not be heard against a final judgment.

The case is excepted in which he fully proves that during the entire time between the summons to appear until the citation for judgment, the defendant was prevented from appearing in the action by noninterrupted *force majeure.*

ART. 774. In order that a hearing may be granted in the case of the foregoing article, it is indispensable that it be requested and the evidence of the *force majeure* be presented within four months, counted from the date of the publication of the judgment in the *Boletin Oficial* of the province, where there is one, and in its absence in the *Gaceta* of the general Government.

ART. 775. A hearing shall be granted to the defendant against a judgment rendered in default who had been summoned by a writ delivered to his relatives, members of his household, servants, or neighbors, should the two following circumstances be attendant:

1. That said hearing be requested within eight months from the date of the publication of the judgment in the *Boletin Oficial* of the province, if there be one, and in its absence in the *Gaceta* of the general Government.

2. That it be fully proven that some cause not imputable to the defendant was the cause of the summons not being served upon him.

ART. 776. A defendant who, by reason of not having a known residence, had been summoned by means of edicts, shall be heard against the final judgment when all of the following circumstances are attendant:

1. That said hearing be requested within one year, counted from the date of the publication of the judgment in the *Boletin Oficial* of the province, where there is one, and in its absence in the *Gaceta* of the general Government.

2. That the defendant proves that he was constantly away from the town in which the action was prosecuted from the time he was summoned thereto until the publication of the judgment.

3. That he likewise proves that he was absent from the town of his last place of residence at the time of the publication therein of the edicts.

ART. 777. In all these cases the reasons advanced by the litigant in

default that he be heard against the final judgment, shall be determined in accordance with the procedure prescribed for incidental issues, at which the others interested in the action shall be heard.

ART. 778. The audiencia which has rendered final judgment or to whose district the court of first instance, whose judgment has become final, pertains shall be the one to take cognizance of these incidental issues.

Against the decision thereon declaring that the litigant in default shall or shall not be heard, there shall be no remedy except an appeal for annulment of judgment.

ART. 779. In the cases in which the Supreme Court shall have rendered the judgment, it pertains to the same to declare without further remedy whether the litigant in default shall or shall not be heard.

ART. 780. If the hearing requested by the litigant in default is refused, all the costs of the incidental issue shall be taxed against him, and the judgment rendered in the action shall become final and shall be executed, the proper orders for this purpose being issued.

ART. 781. When said hearing is granted, a certified copy of the decision granting the same shall be transmitted for execution to the judge of first instance who had taken cognizance of the action, the records being also returned if they are in the superior court.

In this case also shall the costs of the incidental issue be taxed against the party who instituted the same, if no opposition has been made to said issue by the opposite party, or if the court considers such opposition was made in good faith.

ART. 782. The hearings granted against judgments rendered in default shall be had in accordance with the following rules:

1. The record shall be delivered for eight days to the litigant to whom a hearing has been granted, in order that he may make such allegations and requests which he may deem proper, in the manner prescribed for answers to complaints.

2. His statements shall be referred for eight days more to the person who obtained the transcript of the judgment, to whom copies of the instrument and other documents shall be delivered.

3. If both litigants or either of them should have requested that evidence be taken, and the question which is the object of the action should be a question of fact, the taking of evidence shall be ordered, one-half the periods of time fixed in article 552 being granted for the submission and taking thereof, without prejudice to also granting the extraordinary period when proper and when it is requested.

4. Thereafter the hearing and determination shall conform to the rules established for the first instance of the proper declaratory action, with the ordinary appeals, and appeals for annulment of judgment which may be proper.

ART. 783. If during the course of these proceedings, the party to

whom the hearing was granted is again in default, a *nolle prosequi* shall be entered and the judgment which closed the proceedings in default shall become final, there being no further remedy against the same.

ART. 784. Against final judgments rendered in oral actions heard before municipal judges in first instance, a hearing shall also be granted to the defendant adjudged in default, if all the following circumstances are attendant:

1. That the citation for appearance in the oral action has been made by edicts, or by a writ delivered to his relatives, members of his household, servants, or neighbors.

2. That he request the hearing within three months from the notification of the final judgment made within the limits of the court.

3. That he fully prove that he did not receive the writ of citation owing to a cause not imputable to himself, or that when the edicts were published he was absent from the town without having returned during the prosecution of the action.

ART. 785. In the case of the foregoing article the judge of first instance, to whose district the municipal court pertains, shall take cognizance of the incidental issue according to the procedure established for oral actions, and shall decide, without further remedy, whether or not the litigant in default shall be heard, communicating his decision to the municipal judge for its fulfillment.

ART. 786. Final judgments rendered in default of the defendant may be executed, reserving the right of the latter to petition for a rescission of the judgment or the hearing mentioned in the foregoing articles.

He who has obtained judgment, however, can not freely dispose of the things of which he has been given possession until the periods above mentioned to hear the litigant have expired.

When the action has had for its object money or a fungible[1] thing, it shall be deposited in due form, if the plaintiff does not give security to the satisfaction of the judge to be responsible for the same in case that after hearing the litigant in default it is ordered returned to him.

In all cases the party in whose favor a judgment in default is rendered may demand that a cautionary notice of his claim be entered in the registry of property.

ART. 787. After the expiration of the periods fixed, without the litigant in default having requested a hearing against the final judgment, the prohibition imposed on the opposite party to dispose of the thing which was the basis of the litigation shall be raised, or, in a proper case, the thing on deposit shall be ordered delivered to him, or the cancellation of the bond, had one been furnished.

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[1] *Fungible:* A term applicable to things that are consumed by the use, as wine, oil, etc., the loan of which is subject to certain rules, and governed by the contract called *mutuum.—Bouvier's Law Dictionary, Rawle's revision.*

ART. 788. A hearing shall not be granted to the litigants in default against final judgments rendered in executory or possessory actions, or in any action after the conclusion of which another action can be brought relating to the same matter.

TITLE V.

SETTLEMENTS BY ARBITRATORS AND AMICABLE COMPOUNDERS.[1]

SECTION I.—*Settlements by arbitrators.*

ART. 789. Arbitrators, who may be appointed for the purpose of settling litigative questions by the persons and in the cases prescribed in article 486, must be lawyers, over twenty-five years of age, who are in the full enjoyment of their civil rights.

ART. 790. There must always be an odd number of arbitrators.

If the parties agree upon the appointment of but one arbitrator he shall be selected by common consent.

Common consent is also necessary in the selection of all the arbitrators, or at least of the third, if three or five be agreed upon, which number can not be exceeded.

In no case can the interested parties grant to a third person the power to select or appoint any of the arbitrators.

ART. 791. The compromise must necessarily be contained in a public instrument, and shall be null if prepared in any other manner.

ART. 792. The compromise must contain under penalty of nullity:

1. The names, occupation, and domicile of those who authorize the same.

2. The names, occupation, and domicile of the arbitrators.

3. The question to be submitted to arbitration with its attendant circumstances.

4. The period within which the arbitrators must render a decision.

5. The stipulation that a fine shall be paid by the party who fails to comply with such parts of the stipulation as are indispensable to carry out the compromise.

6. The stipulation that another fine shall be paid by any of the parties who may appeal from the decision, to the party who agrees thereto, before such appeal can be heard.

7. The designation of the place where the proceedings for arbitration must be had.

8. The date on which the compromise was entered into.

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[1] There are two sorts of arbitrators, the arbitrators properly so called and the amicable compounders. The arbitrators ought to determine as judges, agreeably to the strictness of law. Amicable compounders are authorized to abate something of the strictness of the law in favor of natural equity.—*Civil Code of Louisiana, articles 3109, 3110.*

ART. 793. After the instrument has been drafted, the notary who executed the same, or the one who attests it, shall present it to the arbitrators for their acceptance.

An entry of the acceptance or the refusal to accept shall be made at the end of the document, which the arbitrators shall sign, together with the notary.

ART. 794. If any of the arbitrators should not accept, or lacks any of the qualifications mentioned in article 789, he shall be substituted in the manner prescribed for his appointment.

When the parties do not agree to said appointments, the compromise shall have no effect.

It shall also have no effect if any of the parties fails to attend the making of the appointments within three days after having been required to do so by the notary, at the instance of the other party. In such case, said party shall pay to the latter the fines stipulated, according to the provisions of subdivision 5 of article 792.

ART. 795. The acceptance by the arbitrators of their appointment shall give the right to each of the parties to compel them to comply with their duties, under the penalty of being liable for the losses and damages which may be suffered.

ART. 796. In the case of the foregoing article the judge of first instance of the judicial district in which the arbitration is or should be held, or, in his absence, the judge of the place where any of the arbitrators reside, shall admonish them, at the instance of a legitimate party, that they proceed without delay to the discharge of their duties, admonishing them that they will be held liable for losses and damages suffered.

If the arbitrators refuse to act, or allege some excuse, such refusal or excuse shall be heard and determined according to the procedure for, and with the remedies allowed in incidental issues, the period of the compromise being meanwhile suspended.

If the refusal or excuse is overruled, or if the order of the court is complied with, the party prejudiced may institute an action for losses and damages against the arbitrator or arbitrators who may have caused the delay, which shall be heard in the court of first instance, according to the procedure prescribed for the proper declaratory action.

ART. 797. Arbitrators may be challenged only for causes arising after the compromise, or which were unknown when it was agreed upon.

ART. 798. Arbitrators may be challenged for the same causes as any other judges.

The challenge must be presented to the arbitrators themselves.

If they do not allow the challenge, the party presenting the same may repeat it before the judge of first instance of the judicial district in which the challenged arbitrator resides, or before the judge of the

judicial district of any of them, should there be more than one arbitrator challenged.

Until the challenge is heard by the judge of first instance, the arbitration proceedings shall be suspended, and shall continue as soon as a final decision has been rendered thereupon.

ART. 799. The compromise shall become null:

1. By the unanimous consent of those who agreed to the same.

2. By the expiration of the period fixed in the compromise and of any extension thereof, in a proper case, without a decision having been rendered.

If this should occur owing to the fault of the arbitrators, they shall be bound to indemnify any losses and damages suffered.[1]

ART. 800. Should any or all of the arbitrators die, the interested parties must agree to substitute them in the manner designated for the original appointment, unless they agree that the remaining arbitrators render a decision.

The proceedings meanwhile shall be suspended, to be continued afterwards at the stage in which they may be.

All agreements entered into by the parties shall be reduced to a public instrument, and if they do not agree the compromise shall be of no effect.

ART. 801. The period fixed in the compromise for the rendition of a decision shall begin on the day following that on which the last arbitrator accepted his appointment, unless the parties interested should have fixed a day in the instrument.[2]

ART. 802. The interested parties may by common consent extend said period, in a public instrument supplementary to the compromise.

The arbitrators may also extend the period when such power has been expressly granted them in the instrument; but in such case the extension can not exceed one-half of the period designated in the compromise, and must be unanimously agreed upon.

ART. 803. The proceedings by arbitration shall be held before a clerk of a court of first instance, selected by the arbitrators, unless the interested parties designate one by common consent.

ART. 804. The arbitrators shall fix a period for the interested parties, which can not exceed the fourth part of that fixed in the instrument, to prepare their claims and file the documents on which they base the same.

If any of the parties in interest should not do so, the proceedings

[1] This article relates only to settlements by arbitrators and not by amicable compounders.—*Decision of October 19, 1866.*

[2] The period fixed in the instrument of compromise within which amicable compounders are to render their decision is a continuous period, and thus holidays can not be deducted, unless this stipulation was made in the compromise.—*Decision of March 17, 1888.*

shall continue in his default, without prejudice to the right to require said party in default to pay the fine stipulated for failure to comply with the acts indispensable to perfect the compromise.

The party in default may appear and be heard at any stage of the proceedings, but in no case shall there be any retrogression thereof.

ART. 805. The claims and documents which are presented, shall be mutually communicated by the parties to each other, by means of copies which are to be attached thereto, as prescribed in articles 514 et seq., and they shall be granted a period for replying thereto which shall not exceed one-fourth of the time indicated in the preceding article for preparing and presenting the same.

ART. 806. Within said period each of the parties may impugn the claims of the opposite party and present the documents which they may consider necessary for the purpose.

These documents shall state whether the taking of evidence is or is not considered necessary by them.

ART. 807. As soon as the periods fixed for the preparation of claims and the answers thereto have expired, the arbitrators shall take evidence in the proceedings, should both parties have requested it or if there is not an agreement between them as to facts of direct and well-known influence in the questions which are the object of the proceedings.

ART. 808. Although neither of the parties may have requested the admission of evidence, the arbitrators may take it, determining the facts to which it should be confined.

In such case the evidence can not be extended to any other point at issue.

ART. 809. The period for the admission of evidence can not exceed the fourth part of that fixed in the compromise.

The time for submitting and taking evidence shall be common to all parties, within which that relating to challenges, in a proper case, must also be taken.

ART. 810. The same means of proof are admissible in proceedings before arbitrators as in declaratory actions of greater import. The proceedings requested for the taking thereof shall be pursued with the same formalities and in the same manner.

The interested parties shall be allowed to take copies or memoranda of the testimony taken.

ART. 811. In proceedings for the taking of evidence, which the arbitrators themselves can not perform, they shall call upon the judge of first instance, who shall issue mandates, letters rogatory, and other processes for the taking of evidence, which may be necessary.

ART. 812. At the conclusion of the period for the taking of evidence, and after that taken has been attached to the proceedings had, the arbitrators shall cite the parties for judgment.

Before pronouncing judgment they may hear the parties or their

attorneys, if they believe it necessary, or the parties request it, setting a day for the hearing.[1]

ART. 813. The arbitrators, before rendering their decision, may, in the furtherance of justice, order any of the proceedings mentioned in article 340.

ART. 814. The arbitrators shall render their judgment upon all of the points subject to their decision, within the period remaining of the time fixed in the compromise or in the extension thereof, should the same have been granted.

ART. 815. The judgments of the arbitrators should be according to law and the claims and evidence, and shall be rendered in the manner and with the formalities provided for judgments in ordinary actions.

ART. 816. An absolute majority vote of the arbitrators, when there are more than one, shall be sufficient to render a judgment.

Should there not be a majority of affirmative votes, the vote of each arbitrator shall be entered in the record in the form of a judgment.

The points upon which they disagree shall be submitted to the judge of first instance of the judicial district, and his decision shall be the judgment, whether it agrees or not with the vote of any of the arbitrators.

ART. 817. The judgment of the arbitrators, or that rendered by the judge of first instance, in a proper case, may be appealed from for review and stay of proceedings to the audiencia of the district.

ART. 818. Said appeal must be taken within the five days following that of the notification of the arbitral judgment, or that of the judge of first instance in a proper case.

On taking the appeal, or within three days thereafter, the appellant must show that he has paid the fine agreed upon in the compromise, to the party who has agreed to the judgment, or deposit the same in the clerk's office for delivery to him, without which requisite the appeal shall not be entertained and the judgment shall become final.

ART. 819. If both parties shall have appealed from the judgment, neither shall be obliged to pay the fine.

If the appellee, after having received the amount of the fine, should join in the appeal to the superior court, he shall return the fine to the appellant, with the legal interest.

ART. 820. Against the orders of the arbitrators issued during the prosecution of the proceedings no other remedy shall be allowed than that of a rehearing within five days.

If the rehearing be denied, and if the request for a rehearing should be based upon some defect in the form of the compromise, or upon the procedure which might affect the validity of the proceedings, a petition for annulment may be interposed, together with the appeal from the judgment.

[1] Article 799 of the former law did not require a citation for judgment, and the Supreme Court had declared that this proceeding, which is indispensable at the present time, was not only unnecessary, but improper.—*Decision of May 31, 1878.*

ART. 821. When the appeal is allowed, with the petition for annulment in a proper case, the procedure established in article 386 shall be observed, transmitting the record to the audiencia through the judge of first instance.

ART. 822. The prosecution of these appeals shall conform to the rules established for appeals from final judgments in actions of greater import.

From judgments rendered by audiencias, an appeal for annulment of judgment lies in the cases, and in the manner established for such actions.

ART. 823. When a compromise is entered into for the purpose of deciding an unfinished action pending in first instance, as soon as the compromise is presented, together with the acceptance of their appointment by the arbitrators, the judge shall order that the further hearing of the proceedings be had before said arbitrators, the clerk in whose office the records are located advising the said arbitrators thereof.

ART. 824. If the compromise is entered into in order to decide an action pending in second instance, the arbitrators shall continue the proceedings according to law, and their decision shall have the same effect as that of the audiencia.

ART. 825. An appeal for annulment of judgment shall lie against their decision, in the cases and with the requisites which may be proper for said appeal from judgments of audiencias in declaratory actions.

In such case said appeal shall not be allowed, if the appellant, at the time he takes the same, does not show that he has paid to the other party the fine agreed upon in the compromise.

SECTION II.—*Settlement by amicable compounders.*

ART. 826. Amicable compounders, appointed by those who have the legal capacity to decide the questions mentioned in article 486, must be men of legal age, in the full enjoyment of their civil rights, and know how to read and write.

ART. 827. The provisions of articles 790 to 796 and articles 799 to 802, inclusive, relative to arbitrators, shall be applicable to amicable compounders without any other modification than the following.

The compromise must contain, under the penalty of nullity, the details mentioned in subdivisions 1, 2, 3, 4, and 8 of article 792.[1]

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[1]The provisions contained in this article of the law are not applicable to the appointment of amicable compounders imposed by a testator upon his heirs, because they refer to a voluntary compromise which does not exist in the case mentioned in which the appointment of compromisers must be made, even though the heirs do not agree as to the designation of the third member.—*Decision of July 11, 1877.*

Article 827 of the new law in conjunction with article 790 expressly authorizes the submission of the decision to a single amicable compounder, and does not require

ART. 828. These compromises produce all the legal effects of other obligations, and may be invalidated for the same reasons.[1]

ART. 829. The parties are obliged to perform all that may be necessary in order to carry out the stipulations of the compromise. The party not doing so must pay to the other the losses and damages thereby caused.

The question of such damages shall be heard before the judge of first instance, and shall be determined according to the procedure established for incidental issues.

ART. 830. Amicable compounders can not be challenged except for causes arising subsequently to the compromise, or unknown at the time of its execution.

The following only shall be considered as legal causes for such challenge:

1. Interest in the subject which is the object of the action.
2. Manifest enmity toward any of the parties.

ART. 831. The challenge must be interposed before the amicable com-

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the appointment of a third one; but it does require that the number of arbitrators be uneven. (See article 790.)

The period within which amicable compounders are to render their decision is governed by the agreement of the parties contained in the compromise and is counted continuously, as are all periods which refer to the fulfillment of contracts unless feast days are expressly excepted.—*Decision of March 20, 1877.*

Two persons in a private letter addressed to two attorneys contracted the obligation to submit to their decision, as if it were the decision of amicable compounders, and one of said parties refused to comply therewith; he was sued and a decision was rendered declaring that the compromise was null. The other person interested appealed from said decision requesting an annullment thereof, basing his claim upon the principle of *pacta sunt servanda*, but the Supreme Court declared that the appeal was not well taken, because "as article 827 of the law of civil procedure in conjunction with articles 790 et seq. prescribes that compromises of this character must be contained in a public instrument, under penalty of nullity, and that said document shall contain certain details, all of which was omitted in the papers herein referred to, it is evident that the adjudging chamber duly conformed to the legal precepts in declaring the compromise null and void."—*Decision of May 28, 1888.*

[1] The compromises of amicable compounders produce all the consequences of other obligations, and, as in the latter, the limits and extension of the stipulations of the parties are to be understood and explained according to the contents of the instrument, without extending them to things and cases which are not expressly included therein.—*Decision of February 22, 1878.*

The Supreme Court has declared that, in accordance with article 829, together with number 3 of article 793 of the law of civil procedure, the powers of amicable compounders are limited by the will of the parties and that they can not consider cases and things which have not been expressly and finally submitted for their decision. Amicable compounders can not appeal to irrelevant interpretations for the purpose of extending their powers without violating the only substantative law to which they must confine themselves, which is the will of the parties, expressly stated in the instrument of the compromise, the clauses of which must be strictly interpreted, as otherwise the amicable compounders would decide questions and cases not submitted to them.—*Decision of December 10, 1887.*

pounders themselves. Should it not be admitted by them, it shall be heard in the manner prescribed in article 798 with regard to arbitrators.

ART. 832. Amicable compounders shall decide the questions submitted to their decision according to their knowledge and belief without being subject to legal forms.

Their duties are limited to the receiving of the documents presented by the interested parties, hearing said parties, and rendering judgment.[1]

ART. 833. An absolute majority vote shall be necessary to render judgment. If there is not a majority, the compromise shall be without effect.

ART. 834. The judgment must be rendered before a notary, who shall give notice of the same to the interested parties by delivering to them an authenticated copy thereof, stating the date of the notification and delivery, and a note of which service shall also be made at the end of the original judgment, which shall be signed by the interested parties.

ART. 835. From the judgments rendered by amicable compounders there shall be no remedy except that of an appeal for annulment of judgment, for the reasons and within the time and in the manner prescribed therefor in Title XXI of this book.[2]

ART. 836. If the appeal for the annulment of judgment is not allowed, or if not interposed in time, the judgments shall become final, and, at

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[1] This article does not make a hearing of the parties obligatory.—*Decision of October 19, 1865.*

An appeal for annulment of judgment from decisions of amicable compounders does not lie when they are given power to fix the amount of the indemnity due the appellant and they decide that he is not entitled to any indemnification.—*Decision of June 12, 1893.*

When it is clearly and definitely agreed that all doubts which may arise with regard to the interpretation of a contract and its execution are to be submitted to amicable compounders in accordance with law, claims with regard to which there is no agreement between the parties, whether just or not, or whether included in the stipulations of the contract or otherwise, must be submitted for the decision of the amicable compounders.—*Decision of December 30, 1881.*

Should a compromise have been made to the effect that arbitrators are to decide as to the meaning and scope of doubtful clauses of a contract, it is sufficient for the parties to give a different interpretation to one of them for a doubt to exist and give rise to proceedings by amicable compounders.—*Decision of March 29, 1886.*

The compromise being limited to a declaration by the amicable compounders as to whether the parties are or are not entitled to an indemnity for losses and damages, an award which taxes, liquidates, and orders said indemnity to be paid is null according to law.—*Decision of February 22, 1878.*

[2] The power having been granted to the parties to a compromise executed in 1864 to render the award without effect by paying the fine agreed upon, such clause constitutes a perfect right based upon article 302 of the law of commercial procedure, and a judgment which does not recognize the same violates this precept, because neither the law relating to the unification of the local laws (*fueros*) nor the latest civil procedure have repealed substantive rights legitimately acquired.—*Decision of March 21, 1883.*

the instance of a legitimate party, they shall be executed by the judge of first instance in whose district is situated the town wherein the judgment was rendered, proceeding in the manner prescribed for the execution of other judgments.

ART. 837. In order to request the execution of the judgment, certified copies of the compromise and of the arbitral judgment shall be presented, issued by the notary who authenticates the same.

After the twenty days have elapsed prescribed in this code for the appeal for the annulment of judgment against judgments rendered by amicable compounders, the judge shall order, if requested, the execution of the judgment; but if the judgment debtor proves that an appeal for the annulment of the judgment has been taken and admitted, the judge shall at his instance annul and suspend all proceedings relating to the execution, taxing the cost against him who requested execution, unless he should have given the bond prescribed in the following article.

ART. 838. The judge shall also order the execution of the judgment of the amicable compounders immediately after they have rendered the same, and even though an appeal for annulment of judgment has been taken and allowed, providing that he who requests the execution of the judgment should furnish security sufficient, in the opinion of the judge, to cover what he may have received and to pay the costs, in case that the annulment of the judgment should be declared.

TITLE VI.

THE SECOND INSTANCE.[1]

SECTION I.—*General provisions.*

ART. 839. Every appellant must appear before the appellate court within the period fixed in the summons.

If he does not do so the appeal shall be dismissed at the expiration of said period, without the necessity of having default entered, and the judgment or ruling appealed from shall become final without further remedy.[2]

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[1] See footnote No. 2, page 3, under *Instancia*.

[2] A petition for a review may be made against an order declaring that an appeal has been abandoned, in accordance with article 890.—*Decision of March 26, 1866.* An appeal is not considered as abandoned until the court so declares.—*Decision of April 6, 1864.* It is not necessary for the chamber to cite the parties to enter the appeal, because if the appellant does not appear within the period of the summons the appeal shall be declared abandoned upon the first request of the appellee for an entry in default.—*Decision of April 24, 1869.* At the present time a request for a declaration of default is not necessary.

Powers of a court after an appeal for a review and for a stay of proceedings has been allowed.—In an appeal for annulment of judgment, in which articles 70 and 838 of the law of civil procedure of 1855 (383, 388, and 840 of that of 1881) and law 26,

ART. 840. In cases in which, an appeal having been allowed for review only, the appellant is furnished a certified copy thereof to perfect it, the audiencia shall not allow the appeal and shall declare it dismissed without the necessity of having default entered if the appellant appears after the fifteen days fixed in article 392.

The same shall take place with regard to the remedy of complaint referred to in article 398.

ART. 841. In all cases wherein an appeal is dismissed, the costs thereof shall be taxed against the appellant, and the order taxing the same shall be communicated to the inferior judge with a return of the record, in a proper case, for the proper purposes.

An entry shall be made on the order returning the record, by the secretary, of the fees due and the amount to be paid for the official stamped paper which may have been used according to the provisions of the second paragraph of article 248, in order that said amounts may be demanded of the appellant.

ART. 842. If the appellee does not appear before the superior court, the proceedings shall follow the regular course, and orders issued therein shall be posted within the limits of the court room.

Should he appear later, he shall be admitted as a party to the action, and all subsequent proceedings shall be communicated to him or to his solicitor without retrogressing in the proceedings.

ART. 843. If the appellant is entitled to prosecute or defend as a poor person, he shall be considered as having entered an appearance in time before the superior court, if within the period fixed in the summons he appears personally or through another person and requests that an attorney and solicitor be appointed *ex officio* to take charge of his defense.

The same petition may be made when he is summoned, in which case the clerk shall make an entry of the fact in the proceedings.

In these cases the court shall make the appointments, if he is entitled to prosecute or defend as a poor person, and the solicitor appointed *ex officio* shall be served with all proceedings as the representative of the appellant.

ART. 844. An appellee who has the same privilege may in like man-

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Title XXIII, Partida 3, were cited as violated, the supreme court, in allowing the appeal, stated:

"That as soon as an appeal is allowed for a review and for a stay of proceedings, the adjudging court shall absolutely cease to take cognizance of the proceedings, only retaining powers of coercion to oblige the appellant to furnish the means necessary to perfect the appeal, if he does not abandon it expressly and finally, and that the court *ad quem* is the only one which is competent to declare the appeal abandoned after it has been allowed."—*Decision of April 29, 1882.*

The lack of personality in the solicitor of the appellee does not produce the effect of annulling a ruling declaring an appeal to be abandoned, because it could be made without a prior entry of default.—*Decision of December 31, 1887.*

ner request the appointment of an attorney and solicitor *ex officio* at any stage of the appeal.

ART. 845. An appellant may abandon the appeal at any stage of the proceedings, on the payment of the costs incurred by the opposite party thereby.

In order to consider an appeal as abandoned, it is necessary that the solicitor present a special power of attorney, or that the litigant interested ratifies said abandonment under oath in the instrument.[1]

ART. 846. Within the three days following the delivery of the copy of the petition to abandon the appeal, the appellee may impugn the same on the ground of the insufficiency of the power of attorney or lack of personal capacity on the part of the litigant, which defects, if true, the audiencia shall order to be cured within a short period fixed for said purpose.

If this period should elapse without its having been done, the appeal shall, at the request of the appellee, proceed in its regular course.

ART. 847. After the defects have been cured, or when the appellee does not impugn the petition, the audiencia shall, without further proceedings or remedy, consider the appellant to have abandoned the appeal, taxing the costs upon him, and thus make the judgment appealed from final, and order that notice thereof be communicated to the inferior judge, with the return of the record, in a proper case.

ART. 848. If the appellee should desire to continue with the appeal, and therefore, within the three days prescribed in article 846 should object to the abandonment thereof, the audiencia shall permit the appellant to withdraw, and tax all costs against him incurred up to that time, proceeding with the appeal for the purpose of determining such points of the judgment which relate to the concurrence of the appellee.

The same action shall be taken if the appellee within said period should state that he concurs in the appeal, in the event that the withdrawal of the appellant took place before that stage of the action in which said remedy could be employed according to articles 857 and 891.[2]

ART. 849. As soon as a judgment rendered on an appeal becomes final, it shall be communicated to the inferior judge for execution at the cost of the appellant by means of a certified copy and letters mandatory.

If there has been an adjudgment upon costs the same shall first be taxed.

ART. 850. The certified copy referred to in the foregoing article

[1] A court can not consider an appeal as abandoned, even though the appellee consents to all the petitions of the appellant, without the previous conformity of the latter with said declaration.—*Decision of May 29, 1888.*

[2] When the appellee concurs in the appeal, it can not be considered that the judgment has been accepted by him.—*Decision of December 14, 1865.*

shall contain the final judgment, and, in a proper case, the taxation and approval of costs.

A memorandum of said certified copy shall be made in the office of the clerk of the audiencia and a literal copy thereof shall be entered in its register.

ART. 851. A transcript of the final judgment in the action shall also be issued, with the formalities and in the manner prescribed in article 373, when any of the parties request it for the protection of his rights.

This writ shall be issued at the cost of the party requesting it, after the opposite party has been cited to appear at the hearing of such request, and it shall also be recorded in the office of the clerk of the audiencia.

ART. 852. Without prejudice to the issue of transcripts or to the taxation of costs in a proper case, the final judgment shall be immediately communicated to the inferior judge for its execution, if any of the parties request it.

ART. 853. Appeals which may be taken from decisions of municipal judges to those of first instance shall be governed by the special provisions therefor without prejudice to the application of the rule prescribed in article 839.

SECTION II.—*Appeals from final judgments rendered in actions of greater import.*

ART. 854. When the record of proceedings has been received by the audiencia receipt thereof shall be acknowledged, and as soon as the appellant has appeared, within the proper period and in due form, the record shall be referred to the relator for the making of the abstract.[1]

ART. 855. When the abstract has been prepared, it shall be delivered with the record to each of the parties in their order for the examination of their attorneys, for a period not less than ten nor more than twenty days.

This period may be extended to thirty days at the instance of a party only in case that the record exceeds 2,000 folios.

In such case the extension granted to the appellant shall be understood as granted also to the appellee, without the necessity of the latter requesting it.

ART. 856. Both the appellant and the appellee shall, on the return of the record, present an instrument subscribed by an attorney, stating that they agree to the abstract, or indicating the additions or corrections which they may consider necessary.

ART. 857. In said instrument the appellee may concur in the appeal on the points in which he believes himself prejudiced by the judgment.

[1]It is not legal for parties to an action to alter the essential bases of an action or of exceptions discussed at first instance, and thus ignore the mission which appellate courts have according to law.—*Decision of June 26, 1884.*

Neither before nor after this time can this remedy be employed.[1]

ART. 858. If any essential formality has been omitted in the first instance, which would give rise to an appeal for annulment of judgment, and an appeal based thereon is disallowed, the interested party may, in a supplementary prayer in the instrument referred to in article 856, request that the defect be cured.

This petition shall be heard and decided before any other proceedings, and according to the procedure prescribed for incidental issues.

Said petition can not be interposed when it has already been denied by a final order of the audiencia by virtue of a former appeal.[2]

ART. 859. In the same instrument, the parties may request by means of a supplementary prayer, that evidence in the action be taken, when they consider it necessary and proper, giving the reasons upon which they base their request.[3]

ART. 860. In any of the cases mentioned in the three foregoing articles a copy of the instrument must also be attached for delivery to the opposite party.

ART. 861. The taking of evidence at second instance can only be ordered—

1. In the case of article 566, if the chamber should deem that the testimony proposed and denied in the first instance is pertinent.

2. When for any cause not imputable to the party requesting the taking of evidence, it was impossible to take all or a part of that which was offered in first instance.

3. When any new fact pertinent to the decision of the cause has arisen after the termination of the period for the offering of evidence at first instance.

4. When after the termination of said period, some previously unknown fact of decided influence in the action comes to the knowledge of any of the parties, provided that said party states under oath that he had no previous knowledge of said fact.

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[1] When a judgment has been appealed from, even though it be only in one of its points, it is not *res judicata* in any of the others.—*Decision of January 11, 1876.*

Although the appeal taken by one of the appellants is dismissed, he may afterwards concur in the appeal of the opposite party (*Decision of February 15, 1886*), his concurrence having the same effects as the appeal itself.—*Decision of April 8, 1885.*

[2] This petition must be heard and decided according to the procedure prescribed for incidental issues, and the remedies authorized by article 401 must be employed against decisions denying the same.—*Decision of March 19, 1885.*

[3] In order that the taking of evidence may be ordered in the second instance, it is indispensable that it be of well-known influence in the action and that the party state under oath that he had no knowledge of the existence thereof before the expiration of the period in which to submit evidence at first instance.—*Decision of November 26, 1885.*

In order that evidence may be admitted at second instance, it is indispensable that the requisites of law therefor have been fulfilled, and if the taking of evidence has been requested after the record has been ordered to be heard, the petition can not be allowed.—*Decision of January 14, 1880.*

5. When the defendant whose default has been declared appears in the action at either of the two instances, after the time granted for the submission of evidence in first instance.

In the first four cases the evidence shall be limited to the facts therein referred to; in the last case all pertinent evidence submitted by the parties shall be admitted.[1]

ART. 862. Without the necessity of taking evidence in the cause, the litigants may request at any time between the delivery of the record for examination until the citation for judgment:

1. That the opposite party be obliged to make a single judicial confession, providing it be with reference to facts which have not been the object of interrogatories in the first instance.

2. That any of the documents mentioned in article 505 be attached to the record or that the parties themselves be required to present them.[2]

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[1] The submission of evidence in the second instance can take place only in the special cases mentioned in the Law of Civil Procedure, and can not be submitted when in the judgment of the chamber it could have been submitted at first instance.—*Decision of April 5, 1879.*

The nonreturn, duly executed, of letters rogatory for the taking of some testimony is imputable only to the person interested, because judges and courts can not act, *ex officio* in civil matters, and, consequently, said noncompliance with the letters rogatory can not authorize the taking of evidence in the second instance.—*Decision of January 18, 1879.*

The admission of evidence in the second instance is not proper if it consists of documents bearing a date prior to that of the complaint and answer, which, even though they came to light subsequently, the oath prescribed in article 506, subdivision 2, of the Law of Civil Procedure is not taken upon the presentation thereof.—*Decision of October 27, 1883.*

"The admission of evidence during the second instance can take place only when it could not be taken in the first instance, for causes not imputable to the petitioner," and it appearing that the evidence subsequently submitted to the chamber was not submitted in the inferior court, notwithstanding that the existence and whereabouts of the documents were known at the time, said evidence can not be admitted.—*Decision of April 27, 1890.*

Although a litigant should state under oath that a certain fact was unknown to him, if data is in question which may be known by any person, his affirmation will not be sufficient to order the taking of evidence in the second instance.—*Decision of May 17, 1888.*

[2] In order that the confession referred to in this article may be ordered in the second instance, it is necessary for the party requesting it to submit the interrogatory of the questions to be put therein, for the purpose of ascertaining whether the confession requested is in conformity with the provisions of the said article.—*Decision of October 16, 1889.*

Interrogatories can not be considered proceedings for the taking of evidence, and, therefore, are not admissible in the second instance when an executory action is in question.—*Decision of September 21; 1888.*

After the parties have been cited for judgment, judges and courts can not admit evidence or proof of any character whatsoever, although they have the privilege of

ART. 863. When the appellant requests that evidence be taken, the appellee must reply to this request in the instrument referred to in article 856.

If the appellee makes such request, the appellant may object thereto within the three days following the delivery to him of the copy of the petition of the appellee.

ART. 864. The chamber shall order the admission of evidence without further proceedings, provided that the parties agree that it is necessary and proper.

ART. 865. If the parties should not agree thereto, the record shall be referred to the *ponente* for six days, and, in view of his report, the chamber shall decide what it may deem proper within three days.

ART. 866. There shall be no appeal from the ruling ordering the taking of evidence.

Against the ruling denying the request for the taking of evidence there shall be granted the remedy of a petition for review before the same chamber and, in a proper case, an appeal for annulment of judgment.

ART. 867. With regard to the periods and means of proof and manner of taking evidence, the procedure established for the first instance in actions of greater import shall be observed.

ART. 868. After the expiration of the period for the taking of evidence, or as soon as all that submitted and admitted has been taken, the chamber shall order, without necessity of the parties requesting it, that the evidence be attached to the record and that the latter be returned to the relator in order that he may make the necessary additions to the abstract.

ART. 869. After the additions to the abstract have been made it shall, with the record, be referred to each of the parties for examination for a period of six days, which period can not be extended.

Upon returning the record, the parties shall state whether they agree to the additions to the abstract, or request the new additions or corrections which they may consider necessary.

ART. 870. Both in the case of the foregoing article, as in that of article 856, after the record has been returned by the appellee, it shall be referred to the justice *ponente* for a period equal to that granted to the parties for their examination, for the purposes prescribed in articles 336 *et seq.*

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ordering such evidence to be taken as they may see fit, in furtherance of justice.—*Decision of February 22, 1862.*

The Law of Civil Procedure authorizes the parties to demand judicial confession until the service of the notice of citation for judgment, and this would be absolutely useless if it were not understood that the same period is allowed for the proceedings after said judicial confession had been requested and granted.—*Decision of March 8, 1870.*

ART. 871. When the parties agree to the abstract, or when the corrections or additions which in view of the report of the justice *ponente* the chamber deems proper among those requested by the parties, it shall order that the record be brought to a hearing, and cite the parties for judgment.

ART. 872. After the parties have been summoned and the hearing has been held in the manner prescribed in articles 321 *et seq.*, the chamber shall render judgment within fifteen days, counted from the one following the conclusion of the hearing.

ART. 873. If the chamber deems it necessary to order any of the proceedings referred to in article 340, in furtherance of justice, the period for rendering judgment shall be suspended and shall again commence as soon as the proceedings had have been attached to the record.

ART. 874. If any of the parties intend to take an appeal for annulment of judgment from the judgment rendered by the audiencia, the proceeding prescribed in title 21 of this book shall be observed.

If this appeal is not prepared and interposed within the legal period, the provisions of article 849 shall be observed.

ART. 875. When the parties request it, or when, at the instance of any of them, the chamber so orders, a written or printed argument will be permitted in place of an oral argument.

Such request must be made within the three days following that of the citation of the parties for judgment.

ART. 876. If all of the interested parties unite in requesting that the argument be written or printed, the chamber shall so order, whatever be the character or importance of the cause.

Otherwise the opposite party shall be heard within three days upon any petition made of this character, and if he does not agree the chamber shall decide what it considers proper in view of what both set forth.

ART. 877. In order that a written or printed argument may be granted in the case of the last paragraph of the foregoing article, it is necessary—

1. That it be a declaratory action of greater import.

2. That, owing to its importance, in the opinion of the chamber, a written argument is more convenient for the information of the judges than an oral argument.

ART. 878. The period within which a written or printed argument must be presented shall be that agreed upon by the parties, when they have agreed upon such argument; otherwise, the period fixed by the audiencia when passing upon the request thereon.

ART. 879. The period fixed by the audiencia can not be less than thirty nor more than sixty days.

Within this term the one fixed may be extended, providing that the parties agree thereto, or when the court for any just cause considers it proper.

ART. 880. The audiencia shall, in view of the length of the arguments, fix a time for the printing thereof.

This period may be extended when circumstances independent of the will of the parties require it, in the judgment of the chamber.

ART. 881. There shall be no remedy whatsoever against orders of the audiencia permitting written or printed arguments and relating to the period for their preparation.

ART. 882. In all cases where written or printed arguments are submitted, the abstract of the action must also be printed and attached thereto.

ART. 883. After the argument has been printed, copies thereof shall be distributed to each of the justices who are to take part in the decision of the action, signed by the relator, attorney, and solicitor of the parties, and another shall be attached to the record.

ART. 884. The period of time for the rendition of judgment in cases where a written or printed argument has been presented shall commence to be counted from the day following that on which the copies were delivered to the justices, a memorandum of which shall be entered upon the record by the clerk of the chamber or by the secretary.

ART. 885. If the justices do not agree upon a decision, after such disagreement has been recorded in the manner prescribed, copies of the argument shall also be given to the justices selected to adjust the disagreements.

The period for the rendition of judgment shall commence to be counted from the date of said delivery.

SECTION III.—*Appeals from interlocutory judgments and rulings and in actions other than those of greater import.*

ART. 886. All appeals, both from rulings as well as from judgments, except final judgments in actions of greater import (which are referred to in the preceding section), shall be heard and determined in the manner prescribed in this section.

Appeals in actions of lesser import are also excepted, which shall be heard and determined according to the special procedure provided therefor.

ART. 887. As soon as the record has been received by the audiencia, it shall acknowledge the receipt thereof, and as soon as the appellant has appeared within the proper time and in the proper manner, it shall be referred to the relator for the purpose of preparing an abstract of such matters as may be pertinent to the appeal.

ART. 888. In cases in which a certified copy is furnished the appellant for the purpose of perfecting an appeal admitted for review only before the superior court, the record shall also be referred to the relator for the preparation of the abstract as soon as the appellant has perfected the appeal, should he do so within the legal period.

ART. 889. After the abstract has been prepared it shall be delivered, together with the record, to each of the parties in their order, for examination by their attorneys, for a period not less than six nor more than ten days, which period can not be extended.

ART. 890. Both the appellant and the appellee on returning the record shall state, in an instrument subscribed by their attorneys, their agreement to the abstract, or shall request the changes and additions which they may consider proper.

ART. 891. In this instrument the appellee may concur in the appeal in such portions of the judgment or ruling in question which he considers prejudicial to him.

Neither before nor after this stage in the proceedings can he employ this remedy.

ART. 892. The claims referred to in articles 858 et seq., when proper, must also be set forth in said instruments, and, in a proper case, the provisions of article 860 shall be observed.

ART. 893. After the record has been returned by the appellee, it shall be referred to the justice *ponente* for his examination for a period equal to that granted to the parties.

ART. 894. When the parties have agreed to the abstract, or when the changes or corrections which, in view of the report of the justice *ponente*, the chamber believes to be pertinent have been made, at the request of the parties a hearing shall be ordered and the parties cited to appear.

ART. 895. After the hearing, the chamber shall render its decision in the form of a ruling or judgment, as may be prescribed for like decisions in first instance.

Such decision shall be rendered within five days in matters as are declared preferred by article 321, and in all other cases within eight days.

ART. 896. The taking of evidence can be authorized only in these appeals when such evidence by law may be taken in the first instance, and any of the cases mentioned in article 861 is attendant.[1]

ART. 897. The period for the taking of evidence can not in such case exceed that granted by law for the first instance, and the chamber may fix the time which it may consider necessary within said period, which can not be extended. Evidence shall be taken in the same manner as prescribed for the first instance.

ART. 898. The provisions of articles 862, 863, 864, 865, 866, 873, and 874 shall also be applicable, in a proper case, to the appeals herein referred to.

ART. 899. When the evidence has been attached to the record at the time and in the manner prescribed in article 868, it shall be sub-

[1]A petition for a rehearing may be made before instituting in a proper case an appeal for annulment of judgment against a ruling which denies the admission of evidence in the second instance.—*Decision of January 29, 1886.*

ject to examination by the parties in the office of the relator, or of the clerk of the chamber, for four days common to both parties.

ART. 900. Upon the expiration of this period, the relator shall present his report, and the chamber shall order a hearing with citation of the parties for judgment.

ART. 901. Between the date of this order and the day set for the hearing, the relator shall add to the abstract the evidence taken.

TITLE VII.

THE REMEDY OF CIVIL LIABILITY AGAINST JUDGES AND ASSOCIATE JUSTICES.[1]

ART. 902. The civil liability which may be incurred by judges and associate justices, when, in the discharge of their duties, they violate the law through inexcusable negligence or ignorance, can be enforced only at the instance of the party prejudiced or of his legal representatives in a declaratory action and before the court immediately superior to the one in which the liability may have been incurred.[2]

ART. 903. An action for civil liability can not be instituted until the action or cause in which the injury is alleged to have been committed has been concluded by a final judgment or ruling.[3]

ART. 904. Said action must be instituted within the six months following that in which the final sentence or ruling was rendered, which concluded the action or cause. After this period an action for civil liability is barred.[4]

ART. 905. The person who has not employed at the proper time the legal remedies against the judgment, ruling, or order in which it is alleged that a violation of law was committed, or who did not object

[1] See articles 400 et seq. of this law, and articles 8 and 260 to 266 of the Organic Law.

[2] Civil liability, in accordance with the provisions of chap. 2, Title V, of the Organic Law of the Judicial Service, and Title VII, Book II, of the Law of Civil Procedure, presupposes loss or damage, which, for the purposes of the remedy, can not be caused by the decisions of judges or associate justices, except to the persons who take a direct part in the proceedings or action of which the former take cognizance as parties thereto.—*Decision of April 21, 1884.*

Article 81 of the constitution, with regard to liability, contains only one precept which is to be extended by the laws governing the different kinds of liabilities, officials liable, and manner of enforcing said liability, and as the Law of Civil Procedure limits the liability to judges and justices it can not be extended to others.—*Decision of January 7, 1886.*

[3] The Organic Law of the Judicial Service, which established the remedy of civil liability against judges and associate justices, as well as the Law of Civil Procedure at present in force, which regulates the procedure to enforce the same, forbid the institution of an action for liability by a person who has not at the proper time made use of the legal remedies against the judgment, ruling, or order which is supposed to have caused the injury, or if he should not have objected at the proper time when he had a right to do so.—*Decision of November 8, 1883.*

[4] This provision includes private individuals, as well as corporations or the State.—*Decision of February 8, 1886.*

thereto at the proper time during the course of the action, if he could have done so, can not institute an action to enforce civil liability.[1]

ART. 906. To every complaint in an action for civil liability, shall be attached a transcript or certificate containing—

1. The judgment, ruling, or order in which the violation is said to have been committed.

2. The proceedings which, in the judgment of the party, go to show the violation of law or of procedure prescribed by law, under penalty of nullity, and that at the proper time the proper remedies or objections against them were used.

3. The judgment or final ruling which closed the action or cause.

ART. 907. The certificate or transcript to which reference is made in the foregoing article shall be requested of the inferior or superior court where the record is filed.

The clerk or secretary shall issue a receipt for the petition requesting the said documents.

The superior or inferior court shall order, under its liability, that said document be furnished without delay, and may order also that such details be added thereto as may be deemed necessary, in order that the truth of the facts may appear.

ART. 908. If ten days, counted from the date of the presentation of the petition, should elapse without said certificate or transcript being furnished to the party, the petitioner may appeal in complaint to the court which is to take cognizance of the matter, which shall require the inferior court to transmit said record within a short period, or shall demand the original record, should it consider it more advisable, and if said record is not required for the execution of the judgment.

In such cases the records shall be exhibited to the plaintiff, or the transcript shall be furnished him in order that he may prepare his complaint, retaining, in a proper case, the record until the conclusion of the action of civil liability.

ART. 909. Whatever be the court which is to take cognizance of the action, it shall be heard and decided according to the procedure prescribed for declaratory actions of greater import.

ART. 910. When the complaint is against a municipal judge, the judge of first instance of the judicial district to which the municipal court belongs, shall take cognizance thereof.

Against the judgment rendered by said judge, an appeal lies to the audiencia for review and stay of proceedings.[2]

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[1] This article does not allow the remedy of civil liability until the remedies allowed by law for the purpose of correcting a violation of law, which is supposed to have been committed, have been utilized.—*Decision of January 16, 1888.*

[2] The parties can not make use of any other means than those prescribed in this title for the execution of judgments.—*Decision of October 22, 1888.*

The delivery of a thing which is the subject of an action is a natural consequence of the ownership which is invoked.—*Decision of March 21, 1888.*

The judge who has rendered a judgment which has been accepted, has the power

ART. 911. The civil chambers of audiencias shall take cognizance, in original and only instance, of actions for civil liability instituted against judges of first instance within their territory.

Against the judgments rendered by the same in these actions the only remedy is an appeal for annulment of judgment.

ART. 912. The third chamber of the supreme court shall take cognizance in original and only instance, and without further remedy, of such actions, when instituted against justices of an audiencia.

ART. 913. In the case of the foregoing article, after the complaint has been filed, the chamber shall order that the audiencia be required to transmit thereto a certified copy of the reserved votes, or a statement that there are none, as the case may be.

When such certificate has been received, it shall be attached to the record, and if it should appear therefrom that there was some reserved vote on the resolution which is the subject of the action for liability, it shall be referred to the plaintiff for a period of six days, in order that he may state whether he desires to prosecute his complaint, or whether he will amend the same in so far as it relates to the justice or justices who may have reserved their votes.

ART. 914. When the complaint is instituted against the justices of a chamber of the supreme court, all the other justices of the same court shall take cognizance thereof in first and last instance, without further remedy, organized as a chamber of justice, with the presiding judge and secretary of the supreme court acting in like capacity.

ART. 915. In every case, the judgment which absolves the defendant of civil liability, shall tax all the costs against the plaintiff, and, if the judgment be wholly or partly for the plaintiff, the costs shall be taxed against the defendants.[1]

In the last case a true copy of the judgment, duly authenticated, shall be transmitted to the colonial department, for the proper purposes.

ART. 916. In no case can a judgment rendered in an action for civil liability alter the final judgment which has been rendered in the action or cause, in which the violation is alleged to have been committed.

ART. 917. When an action of civil liability has been admitted, and as soon as final judgment has been rendered thereon, the record shall be transmitted to the public prosecutor, in order that, if there should be grounds for instituting an action for criminal liability, he may institute and propose what he may deem proper.

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to carry out the corresponding execution.—*Decisions of November 19, 1861, and May 5, 1863.*

An appeal for annulment of judgment does not lie against orders relating to the execution of a judgment, unless said judgment is modified or altered, or new declarations of rights are made in said orders.—*Decisions of May 14, 1867, and June 9, 1870.*

The declarations contained in a judgment can in no manner whatsoever affect persons who have not been parties to the action.—*Decision of May 17, 1883.*

[1] Law 8, Title XXII, Partida 3, relating to the adjudgment upon costs is not applicable to this case.—*Decision of November 8, 1883.*

TITLE VIII.

EXECUTION OF JUDGMENTS.[1]

SECTION 1.—*Judgments rendered by Spanish courts and judges.*

ART. 918. As soon as a judgment is final, the execution thereof shall be proceeded with, always at the instance of a party, and by the judge or court who may have taken cognizance of the action in first instance.

ART. 919. In case of an appeal, as soon as the certificate of final judgment has been received by the lower court, it shall order that it be enforced, and the parties shall be notified thereof, in order that they may make such requests as they may consider proper in connection therewith.

ART. 920. Should the judgment order the payment of a net and determined sum, an attachment of the property of the judgment debtor shall always be issued, without the necessity of a prior personal requisition upon said debtor, in the form and in the order prescribed for executory actions.

For such purpose, the interest on any specific sum shall be considered a net amount, when the rate thereof and term for which it is to be paid is fixed in the judgment.

ART. 921. After the attachment has been made, the appraisement and sale of the property in question, and payment, in a proper case, shall be made entirely in accordance with the rules established for compulsory process after an executory action.

ART. 922. If the judgment orders the doing or refraining from something, or the delivery of a thing or uncertain amount, the judgment shall be executed, employing the means necessary for the purpose and referred to in the following articles.

In all these cases, if the writ of execution can not be immediately complied with, whatever be the cause which prevents it, an attachment of the property may be ordered at the instance of the creditor, in sufficient amount, in the opinion of the judge, to secure the amount of the judgment and the costs of the execution.

The judgment debtor may avoid the attachment by furnishing security sufficient in the opinion of the judge.

ART. 923. If the party adjudged to do something should fail to perform the same within the period fixed by the judge, it shall be done at his expense; and if it be a personal act which can not be performed in this manner, it shall be understood that he prefers to pay damages.

If the amount of these damages, in the case of nonperformance, has been fixed in the judgment, the provisions of article 920 relating to the

[1] According to article 1971 of the Civil Code "The period for the prescription of actions to demand the fulfillment of obligations declared in a judgment, shall begin from the day the judgment became final."

execution of a judgment in which there is an adjudication of a specific amount shall be observed.

Otherwise the provisions of articles 927 et seq. shall be observed.

ART. 924. If a person ordered to refrain from doing something should not obey the order, it shall be understood that he prefers to pay damages, which shall be paid to the person in whose favor judgment was rendered, in the manner prescribed in the foregoing article.

ART. 925. When, by virtue of a judgment, some real estate is to be delivered to the successful litigant, he shall be placed in immediate possession thereof, observing for this purpose the proper proceedings which the litigant may request.[1]

The same shall be done with regard to personal property, if it can be found.

Otherwise the proceedings prescribed in articles 927 et seq. for the payment of damages shall be observed.[2]

ART. 926. If a judgment orders the payment of a fixed amount and another amount not fixed, the payment of the fixed amount may be enforced without the necessity of delaying until the second amount is determined.

ART. 927. When the judgment orders the payment of losses and damages without specifying the amount thereof, whether the basis therefor be established in the judgment or not, the judgment creditor shall present with the petition for the execution of the judgment a statement of such losses and damages and of their amount, calculated, in a proper case, according to the bases established.[3]

ART. 928. A copy of said statement and of the instrument shall be delivered to the judgment debtor, in order that within the period of six days he may answer what he may deem proper.

ART. 929. Should the debtor agree to the statement of the losses and damages and to the amount thereof, the judge shall approve the same without further remedy, and the amount agreed upon shall be collected in the manner prescribed in articles 920 et seq.

If the debtor does not make any answer within the period mentioned in the foregoing article, he shall be understood as agreeing to the amount.

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[1] This is understood if it is in the possession of the person who is to deliver the same in accordance with the final judgment, and not when it is in the possession of a third person who, neither personally nor representing another, was adjudged to return the same.—*Decision of December 29, 1883.*

[2] The requisition for the delivery must be issued by the court and not in a notarial instrument.—*Decision of October 22, 1888.*

[3] When the final judgment did not fix the bases for the payment of losses and damages, the adjudging chamber may regulate the same.—*Decision of December 17, 1885.*

The question of indemnification of losses and damages by a municipality to a private individual by reason of an order to tear down his residence is to be decided by the ordinary courts.—*Royal Decree of October 16, 1873, and Royal Order of May 13, 1875.*

ART. 930. When the debtor impugns said statement or the amount thereof, the procedure prescribed in articles 936 et seq. shall be observed.

ART. 931. Should the judgment order the payment of an uncertain sum, arising from rents, fruits, profits, or products of any kind, whether the basis for payment has been determined or not, the debtor shall be required, within the period fixed by the judge, according to the circumstances, to present the liquidation in a proper case, according to the basis established in the said judgment.

ART. 932. Should the debtor not present the liquidation within the period fixed therefor, he shall be granted another period, not to exceed one-half of the original period, with the admonition that if he does not do so before the expiration of the latter period, he will be obliged to accept and pay that presented by the judgment creditor, except in so far as he may prove it to be erroneous.

ART. 933. Should the second period pass without the judgment debtor having presented the liquidation, the creditor shall be notified thereof, in order that he may prepare and present the same, the record being delivered to him for this purpose, should he request it.

In such case the issue shall be heard and decided according to the provisions of articles 928, 929, and 930.

ART. 934. When the liquidation mentioned in article 931 is presented by the debtor, it shall be referred to the creditor for the period of six days, counted from that following the delivery of the copy of the liquidation and instrument.

ART. 935. Should the creditor agree to said liquidation, the judge shall approve it without further remedy, and the payment of the amount agreed upon shall be enforced in the manner prescribed in articles 920 et seq.

ART. 936. If the parties should not agree, evidence upon the issue shall be taken, should the judge deem it necessary, when any of the parties should request it.

The same procedure shall be observed in other cases of disagreement referred to in articles 930 and 933.

A ruling denying the admission of evidence may be appealed from; but such appeal shall be allowed and determined at the same time as the appeal from the ruling closing the liquidation, if such appeal be interposed.

ART. 937. The period for the taking of evidence cannot exceed 20 days, within which period the judge shall grant the number of days he may consider necessary.

This period shall be common for the presentation and taking of evidence, observing in other respects the provisions for ordinary actions which may be applicable.

ART. 938. The evidence shall be limited to the facts upon which the parties do not agree.

The judge shall disallow, without hearing the opposite party, and without further remedy than that of a rehearing, the evidence which is not pertinent or which tends to contradict the basis fixed for the liquidation in the final judgment.

ART. 939. After the period for the taking of evidence has expired, or all that submitted has been taken, the clerk shall make a report thereon, and the judge shall order the parties to appear at the earliest practicable date, within the next eight days.

The same shall be done in case that no evidence is taken on the issue as soon as the instrument impugning the liquidation is presented.

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The proper record shall be made of the result of the hearing, which shall be signed by all the parties present, and authenticated by the clerk.

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Said ruling may be appealed from for review only. When the appeal is allowed, a certified copy of the ruling, together with such statement as may be necessary for its execution, shall remain in court, and the original record shall be transmitted to the superior court, the parties being summoned to appear before the same within a period of fifteen days.[1]

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When the property has been sold, there shall be given to the creditor the amount agreed upon by the debtor, together with the costs which may be charged against him; and the difference between said amount and that fixed in the ruling shall be deposited in the proper public establishment until the appeal is decided, unless the creditor should furnish security to the satisfaction of the judge to answer therefor, in which case said difference shall also be delivered to him.

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The money value of such product shall be calculated at the average market price therefor at the place where the delivery thereof is to be made, or in its absence, at the nearest market on the day fixed in the judgment; and if no day is fixed therein then that of the day when the judgment is executed.

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Incidental issues which may be raised relating to questions not controverted in the action nor decided in the final judgment, are not included in this provision.[3]

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[3] When a question is raised with regard to the interpretation and effects of a judgment at the time of its execution, the decision rendered, which becomes final, is an integral part thereof.—*Decision of February 5, 1886.*

ART. 949. The costs incurred in proceedings for the execution of final judgments shall be taxed against the judgment debtor.

Those incurred in incidental issues raised during the execution shall be taxed against such party or parties as raise the said issues, on which point judges and courts must make an express declaration in deciding the incidental issue. Should they not do so, each party shall pay those incurred at his instance.

SECTION II.—*Judgments rendered by foreign courts.*

ART. 950. Final judgments rendered in foreign countries shall have, in the territory of the islands of Cuba and Porto Rico, the force established in the respective treaties made by Spain.

ART. 951. Should there be no special treaties with the nation in which the judgment has been rendered, it shall have the same force which is given in said nation to final judgments rendered in Spain.

ART. 952. Should the final judgment have been rendered in a nation where, under its laws, judgment rendered by Spanish courts are not executed, it shall have no force in the islands of Cuba and Porto Rico.

ART. 953. If the judgment should not be included in any of the cases mentioned in the three foregoing articles, the final judgments shall have force in said territory, if the following circumstances are attendant:

1. That the final judgment was rendered in consequence of the prosecution of a personal cause of action.

2. That it is not a judgment rendered by default.

3. That the obligation to enforce which the action was instituted is licit according to the laws of Spain.

4. That the writ of execution possess the requisites necessary in the nation in which it was rendered in order to be considered authentic, and the requisites which the Spanish laws require in order to be admissible in Spain.

ART. 954. The execution of judgments rendered in foreign countries must be requested of the Supreme Court.

Cases are excepted in which, according to treaties, their cognizance pertains to other courts.

ART. 955. After the translation of the judgment, made according to law, and after the party against whom the judgment is rendered and the public prosecutor have been heard within a period of nine days, the court shall declare whether or not said judgment is to be executed.

Against this ruling there shall be no further remedy.

ART. 956. For the citation of the party, who must be heard according to the foregoing article, a certificate shall be issued and forwarded to the audiencia within whose jurisdiction he may be residing.

The period within which to appear shall be thirty days, if the party is a resident of the Peninsula, adjacent islands, or the Canaries.

Sixty days if he resides in the islands of Cuba or Porto Rico.

Ninety days should he reside in the Philippine Islands.

At the expiration of said period the court shall continue with the proceedings, even if the party cited fails to appear.

ART. 957. Should the execution be denied, the judgment shall be returned to the person who may have presented it.

If the execution is ordered, a certified copy of the ruling shall be transmitted to the audiencia, in order that the same may give the proper order to the judge of first instance of the judicial district in which the person against whom the judgment was rendered is domiciled, or of the judicial district in which said judgment is to be executed, in order that its provisions may be fulfilled, employing the means for execution prescribed in the foregoing section.

TITLE IX.

INTESTATE PROCEEDINGS.

SECTION I.—*Provisional measures.*

ART. 958. Intestate proceedings shall be commenced by placing in some secure place, under lock and seal, the property, papers, books, and goods liable to be stolen or hidden; depositing with some person offering sufficient security under the liability of the judge, and after an inventory has been made thereof, such property as may require care and preservation, and by adopting such measures and employing such precautions as may be necessary to avoid abuses and the commission of frauds in regard to credits, landed property, rents, and harvested or growing products.[1]

ART. 959. In order to be able to institute intestate proceedings, it is necessary:[2]

1. That there is information of the recent death of the principal.

2. That the existence of a testamentary disposition is not known.

3. That the deceased left no surviving descendants, ascendants, or collateral relatives within the fourth degree, nor legitimate spouse who may have been living with the said decedent.[3]

ART. 960. If the relatives referred to in the foregoing article, or any of them, be absent without having a legal representative in the town,

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[1] See subdivision 4 of article 270 of the Organic Law.

[2] See art. 912 of the Civil Code.

[3] A person must be considered to have died intestate when no will is presented, nor is the existence of one legally shown by the litigant who contests this legal presumption.—*Decision of February 18, 1879.*

A judgment, in declaring that the preliminary steps taken in intestate proceedings of a married woman, separated from her husband by a judicial decree are valid, does not violate articles 959 et seq., together with article 1040 of this law.—*Decision of December 10, 1884.*

the judge shall limit himself to adopting the measures indispensable for the burial of the deceased, if necessary, and for the security of the property, and to giving proper notice of the death of said deceased to said relatives who may be considered the heirs of said decedent.

As soon as the relatives appear, personally or through legal representatives, the property and goods belonging to the deceased shall be given to them, after which the judicial intervention shall cease, unless some of the interested parties request otherwise.

ART. 961. The judge shall also *ex officio* take such measures as he may deem necessary for the security of the property, even if the deceased left any of the relatives above mentioned, when any of them are minors or incapacitated.

Tutors or curators[1] shall be appointed by the judge of first instance for such persons, if they should have none.[2]

ART. 962. The owner of the house wherein the death occurred, or any other person with whom the person who died intestate and without any of the relatives above mentioned, may have lived, must give notice of the death to the judicial authorities, being liable for all losses or misplacements which may occur of the property of the intestate by reason of his failure to give said notice.

ART. 963. Any of the judges mentioned in rule 5 of article 63, having knowledge of the death of a person dying intestate and without leaving any of the relatives mentioned in subdivision 3 of article 959, in addition to taking the measures prescribed in article 960, shall proceed *ex officio* to take the preliminary intestate proceedings prescribed in article 958.

ART. 964. After the measures mentioned in the foregoing articles have been taken, the judge of first instance, or the municipal judge, in a proper case, shall take the steps he may consider best, in order to ascertain if the person whose succession is in question died with or without making a testamentary provision, receiving, in the absence of other means, and without prejudice to attaching to the record the death certificate as soon as possible, the testimony of relatives, friends, and neighbors of the deceased:

1. As to whether the deceased died intestate.
2. As to whether or not he has heirs of any of the classes mentioned.

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[1] Tutor: The person in charge, primarily, of the education, rearing, and defense, and, secondarily, of the administration and government of the property of a person whose father died before he had attained fourteen years of age, if a male, or twelve years, if a female.

Curator: The person appointed to take care of the property and business of a person who, on account of his minority, insanity, imbecility, absence, interdiction, or declared prodigality, is not in a condition to personally administer or manage the same.—*Escriche, Diccionario de Legislación y Jurisprudencia.*

[2] See article 293 of the Civil Code.

ART. 965. If it appears that the person died intestate without any of the relatives mentioned in subdivision 3 of article 959 the judge shall:

1. Appoint a special administrator, who shall take charge of the burial of and obsequies over the deceased, and all other matters coming within his jurisdiction, according to law.

2. To take charge of the books, papers, and correspondence of the deceased.

3. To make an inventory of the property and deposit the same with some person furnishing sufficient security, who shall also take charge of the administration thereof.

ART. 966. The depositary-administrator of the property shall furnish security in proportion to the property he is to administer, to the satisfaction and under the liability of the judge who has instituted the preliminary proceedings, and he may be removed at the will of said judge.

ART. 967. If money, public securities, or jewelry are found, the same shall be deposited in the public establishment destined to this purpose, and the clerk shall enter in the record a true copy of the instrument showing where they are deposited, and preserve the original in his possession for delivery to the depositary-administrator when he takes charge of the property.

Should there be no such public establishment at the place where the proceedings are pending, the judge shall provide for the safety of said property temporarily, under his liability, in the manner he deems best, without prejudice to ordering the transfer of said property to said establishment as soon as possible.

ART. 968. The judge shall open the correspondence in the presence of the administrator appointed and the clerk, and shall adopt such measures as may appear therefrom to be necessary for the security of the property.

The correspondence relating to the estate shall be delivered to the administrator, and a copy or memorandum thereof, as may be deemed proper, in view of its importance, shall be attached to the record, and the other correspondence shall remain in the possession of the clerk for proper disposition in due time.

ART. 969. After the municipal judge has taken these measures, he shall forward the proceedings to the judge of first instance, and place at his disposal all the property, books, and papers in question and the correspondence received.

ART. 970. The judge of first instance, upon receipt of the proceedings, shall correct any errors that may have been committed therein, issuing the proper orders for the purpose.

ART. 971. As soon as the proceedings have reached this stage, the deputy public prosecutor (*Promotor fiscal*) shall take part in said pro-

ceedings on behalf of the parties who might have an interest in the estate.

It shall be his duty to take such measures as he may consider necessary for the security and good administration of the property.

ART. 972. Intestate proceedings may also be instituted in all cases at the instance of a legitimate party. Such parties shall be, for this purpose:

1. The nearest relatives of the deceased who believe themselves entitled to the estate.

2. The surviving spouse.

3. The creditors who present written and conclusive evidence of their claim, and who are not secured by mortgage or other guaranty.

ART. 973. In the case of the foregoing article, the person who requests that intestate proceedings be instituted must prove that he is a legitimate party according to said article, and that the principal died intestate, or that there is no evidence of any testamentary provision, stating also who are the nearest relatives and their domiciles, if known to him.

Such proof shall be given by means of the proper documents, if it be possible to secure them, and by the evidence of witnesses.[1]

ART. 974. When the petition has been presented, the judge shall order that the person interested ratify the same, and furnish the information, with a citation of the deputy public prosecutor.

If from the petition and the documents presented it should appear that the deceased died intestate, and that the petitioner is a legitimate party, the judge shall order that intestate proceedings be instituted, and that the measures prescribed in articles 963 and 965 be taken.

These measures shall be confined to the prescriptions of numbers 2 and 3 of article 965, when the institution of proceedings has been requested more than thirty days after the death of the intestate, or from the time when notice of his death was received.

ART. 975. In such cases, should there be a surviving spouse, who was cohabiting with the deceased at the time of death, the same shall be appointed depositary-administrator, and as soon as an inventory of the property has been made, it shall be delivered to said depositary-administrator as such, removing the seals and locks as the delivery is made.

No bond shall be required when, in the judgment of the judge, the said depositary-administrator has sufficient property of his or her own to guarantee that which does not belong to him or her. Otherwise he or she must furnish security in such sum as the judge may fix.

If there be no surviving spouse with legal capacity to administer the property, this office shall be given to another person, and the provisions of articles 966 and 967 shall be observed.

[1] See article 11 of the Royal Decree of February 19, 1891, relating to the registration of last wills.

SECTION II.—*Designation of heirs ab intestato.*

ART. 976. After the measures indispensable for the security of the property prescribed in the foregoing section have been taken, and without prejudice to including in the same proceedings the making of the inventory, the designation of heirs *ab intestato* shall be proceeded with in a separate record.

ART. 977. This designation may also be made at the instance of the interested parties, without the necessity of previously taking the steps mentioned, in cases in which they are not necessary and in which the institution of intestate proceedings is not requested.

ART. 978. Heirs *ab intestato* who are descendants of the deceased, may obtain a declaration of their rights by proving with the proper documents or with the evidence obtainable, the death of the person whose estate is in question, their relationship to the same,[1] and with the evidence of witnesses that said person died intestate, and that they, or the persons whom they designate, are his only heirs.

The services of a solicitor or attorney are not necessary in order to present this claim.

ART. 979. The deputy public prosecutor shall be cited to appear at said proceeding, to whom the record shall afterwards be referred for the period of six days for his report thereon.

Should he find the proof insufficient, a hearing shall be granted to the interested parties in order that they may cure the defect.

When the deputy public prosecutor requests it, or the judge considers it necessary, the documents presented shall be compared with the originals.

ART. 980. When the foregoing steps have been taken, the judge shall, without further proceedings, make a ruling designating the heirs *ab intestato* should he deem it proper, or he may refuse to make such declaration, reserving the rights of the claimants to institute an ordinary action.

This ruling may be appealed from both for review and a stay of proceedings.

ART. 981. The procedure prescribed in the three foregoing articles shall also be employed in the designation of heirs *ab intestato* when any of the ascendants of the deceased request it.

In such case, if from the certificate of birth of said deceased it should appear that he died before reaching the legal age for making a will, the testimony of witnesses prescribed in article 978 shall not be necessary.

ART. 982. The same procedure shall also be employed in making a designation of heirs *ab intestato* when requested by collateral relatives within the fourth degree.

[1] See art. 327 of the Civil Code.

The judge shall disallow, without hearing the opposite party, and without further remedy than that of a rehearing, the evidence which is not pertinent or which tends to contradict the basis fixed for the liquidation in the final judgment.

ART. 939. After the period for the taking of evidence has expired, or all that submitted has been taken, the clerk shall make a report thereon, and the judge shall order the parties to appear at the earliest practicable date, within the next eight days.

The same shall be done in case that no evidence is taken on the issue as soon as the instrument impugning the liquidation is presented.

ART. 940. The parties shall appear on the day and hour fixed, and the clerk shall report upon the claims of both and of the result of the evidence that may have been taken; immediately thereafter the judge shall hear the parties or their counsel, should they appear, and shall endeavor to have them come to an agreement.

The proper record shall be made of the result of the hearing, which shall be signed by all the parties present, and authenticated by the clerk.

ART. 941. Within the three following days, the judge shall render, by means of a ruling, the decision which he may deem proper, fixing the amount to be paid in accordance with the final judgment.

In the case of article 933, the judge shall approve the liquidation presented by the creditor, in so far as the debtor may not have proven it incorrect, and which is according to the bases designated in the final judgment.

Said ruling may be appealed from for review only. When the appeal is allowed, a certified copy of the ruling, together with such statement as may be necessary for its execution, shall remain in court, and the original record shall be transmitted to the superior court, the parties being summoned to appear before the same within a period of fifteen days.[1]

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When the property has been sold, there shall be given to the creditor the amount agreed upon by the debtor, together with the costs which may be charged against him; and the difference between said amount and that fixed in the ruling shall be deposited in the proper public establishment until the appeal is decided, unless the creditor should furnish security to the satisfaction of the judge to answer therefor, in which case said difference shall also be delivered to him.

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There shall be no remedy whatsoever against the decision of the audiencia.[1]

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ART. 946. When the judgment orders the payment of a fixed amount of products in kind, if the debtor should not deliver the same in the period fixed, the money value of such products shall be determined and steps shall be taken for the recovery of the respective amount.

The money value of such product shall be calculated at the average market price therefor at the place where the delivery thereof is to be made, or in its absence, at the nearest market on the day fixed in the judgment; and if no day is fixed therein then that of the day when the judgment is executed.

The price shall be proven by means of a certificate of the syndics of the association of brokers (*colegio de corredores*) if there be one, and otherwise, by that of the proper municipal authority.

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ART. 945. The provisions contained in articles 931 to 934 shall be applicable in case the judgment orders that the accounts of an administration be rendered and that the balance on hand be delivered; but in place of the period of six days fixed in article 934 it shall be twenty, and that of twenty days fixed in article 937 may be extended to forty days, when the judge considers it necessary, in view of the importance and complication of the subject.[2]

ART. 946. When the judgment orders the payment of a fixed amount of products in kind, if the debtor should not deliver the same in the period fixed, the money value of such products shall be determined and steps shall be taken for the recovery of the respective amount.

The money value of such product shall be calculated at the average market price therefor at the place where the delivery thereof is to be made, or in its absence, at the nearest market on the day fixed in the judgment; and if no day is fixed therein then that of the day when the judgment is executed.

The price shall be proven by means of a certificate of the syndics of the association of brokers (*colegio de corredores*) if there be one, and otherwise, by that of the proper municipal authority.

ART. 947. No appeal lies from the ruling of the court ordering that the money value of products be determined for the purposes of the execution, but any material error or errors, in the calculation must be corrected as soon as discovered.

ART. 948. All proper appeals taken in proceedings for the execution of judgments shall be admitted for review only.

Incidental issues which may be raised relating to questions not controverted in the action nor decided in the final judgment, are not included in this provision.[3]

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[1] When the judgment rendered for the fulfillment of another judgment conforms to the provisions of the latter, it cannot be said that it is violated or in contravention thereof.—*Decision of June 6, 1884.*

[2] The admission of an appeal for annulment of judgment taken against a decision of an audiencia ordering the rendition of the accounts of an administration and the payment of the balance on hand is not proper.—*Decision of April 20, 1888.*

[3] When a question is raised with regard to the interpretation and effects of a judgment at the time of its execution, the decision rendered, which becomes final, is an integral part thereof.—*Decision of February 5, 1886.*

ART. 1011. When the administrator ceases in the discharge of his duties he shall render a final account supplementary to those already rendered.

ART. 1012. All the accounts of the administrator, including the final one, when he ceases to discharge his duties, shall be subject to examination by all parties for a period common for all, to be fixed by the judge according to the amount involved in said accounts.

ART. 1013. After said period has elapsed without any objection having been made to the accounts, or after any objections made thereto have been overruled, the judge shall render a decision approving said accounts and declaring the administrator free from liability. In the same decision the judge shall cancel the mortgage security which the administrator may have executed, or shall order the return of the bond he may have furnished.

ART. 1014. If the accounts should be impugned at the proper time, said objections shall be heard and determined before the administrator, according to the procedure prescribed for incidental issues.

From the ruling terminating this issue an appeal may be taken both for review and a stay of proceedings. From that rendered by the audiencia an appeal for annulment of judgment lies.

ART. 1015. The administrator is obliged, under his liability, to preserve the property of the estate without deterioration and to see that it produces the proper rents, products, or income.

For this purpose he must make such ordinary repairs to the buildings as may be necessary for their preservation, and have the unrented farms worked and fertilized as their proper cultivation requires.

ART. 1016. When the landed property requires extraordinary repairs or cultivation, the administrator shall advise the court, which, after a hearing of the heirs instituted, or of their representatives, and in their absence, of the deputy public prosecutor in writing, after an examination made by experts, and after an estimate of the costs thereof has been prepared, may order that the work be done under private contract or be let at public auction, as he may consider most advisable in view of the circumstances of the case.

If all or any of the heirs instituted should fail to attend the hearing, the judge shall not on that account delay ordering what may be proper.

ART. 1017. When the amount of the estimate exceeds 5,000 pesetas the work shall be let to the lowest bidder, unless the heirs, or the deputy public prosecutor, in a proper case, should give their consent to having it done by private contract.

ART. 1018. For the said expenses, legal costs, the payment of taxes, and the other ordinary expenses of the estate, the judge may allow the administrator to retain the sum he may consider necessary, and

shall order said sum to be withdrawn from deposit if they can not be met by the ordinary income of the estate.

ART. 1019. The administrator may sell at the proper season and time the crops he gathers as the result of his administration and those received as rents of the estate, doing so through a broker, if there be one, and depositing without delay the net proceeds thereof, as well as all cash received by way of rents of the estate, in the public establishment in which the other funds of the estate are deposited, subject to the orders of the court.

Certified copies of the deposit receipts shall be entered in the record and the original receipts shall be returned to the administrator, to be retained in his possession.

ART. 1020. The administrator may also lease, without public bidding, the dwelling houses or the rooms into which they are divided, and small farms, at the prices and under the terms current in the locality.

He may also authorize the implied extension of the leases pending at the death of the owner, or renew those that have expired, under the conditions stipulated by said owner, and at the same or a better price, whatever be the importance or class of the property.

ART. 1021. The following properties must, at the request of the administrator of the estate, be leased at a judicial public auction:

1. Manufacturing, industrial, or any other establishments.
2. Rural properties the rental value of which exceeds 5,000 pesetas.
3. Properties which must be recorded in the registry of property, according to the provisions of the mortgage law.[1]

ART. 1022. The average price of the rental of the property during the last five years shall serve as a basis for these auctions; otherwise the price fixed by experts selected by the judge.

No bid lower than the designated minimum bid shall be accepted.

ART. 1023. The administrator shall prepare a statement of the conditions for the auction and shall submit the same to the court for its approval.

This document shall be kept for the examination of the bidders in the office of the clerk of the court taking cognizance of the proceedings, and, in a proper case, in that of the court within whose district the property is situate, this information being given in the edicts, as well as the designated minimum bid for the sale, without prejudice to beginning the auction with the reading of said conditions.

ART. 1024. Notice of the auction shall be given by edicts posted in the public places of the locality where proceedings are pending and in that where the property is situate, and shall be inserted in the official

[1] See art. 2, subdivision 5, and art. 1280 of the Civil Code.

papers of both places, should there be any, or, in their absence, in the *Gaceta* of the general government.

Said notices may also be published in the *Gaceta* of Madrid when the judge considers it proper.

ART. 1025. The public auction shall be held thirty days after the date of the publication of the edicts. The judge may, however, reduce this period when circumstances require it, without, however, making it less than fifteen days, and shall name the day, the hour, and the place in which the auction is to be held, which shall also be stated in the edicts.

If the notices are also to be inserted in the *Gaceta* of Madrid, the judge shall fix the date of the auction sixty days after the date of such publication.

ART. 1026. If no acceptable bid is offered, a second auction shall be ordered with the same formalities as the first, lowering the minimum price to be accepted from ten to fifteen per cent, which shall be fixed by the judge as he may deem proper.

ART. 1027. If again no acceptable bid is offered, the judge, after hearing the heirs instituted, in the manner prescribed in article 1016, and, in their absence, the deputy public prosecutor, may authorize the administrator to make a private lease, or order what he may deem best.

ART. 1028. As a general rule all of the properties of the estate shall be leased. There may be excepted that which the deceased worked or cultivated on his own account, and any other property which, owing to special circumstances or in order to make it more profitable, should in the opinion of the administrator, concurred in by the heirs, if declared, be excepted from said general rule.

ART. 1029. During the pendency of the intestate proceedings none of the property inventoried can be alienated. The following are excepted from this rule:

1. Property subject to deterioration.
2. That whose preservation is difficult and expensive.
3. Such crops for whose sale there may be circumstances which are considered advantageous.
4. The other property whose alienation may be necessary for the payment of debts or to meet other obligations of the estate.

ART. 1030. The judge may, upon the recommendation of the administrator and after hearing the heirs instituted in the manner prescribed in article 1016, and, in their absence, the deputy public prosecutor, order the sale of any of the aforementioned properties at public auction after an appraisement by experts.

The sale of public securities shall be made at their market value through an exchange agent or broker appointed by the judge.

ART. 1031. The auction sales referred to in the foregoing article shall be made with the same formalities and within the same periods as

those hereinbefore prescribed for leases, without any exception but that of reducing to ten days the period for the sale of crops, personal property, and live stock.

ART. 1032. The administrator shall be entitled to the following compensation only:

1. Two per cent of the net proceeds from the sale of crops, personal property, or live stock included in the inventory. Proceeds from the sales made by him referred to in article 1019, shall be considered as included in number 4 of this article.

2. One per cent of the net proceeds from the sale of real estate and from collections made on securities of all kinds.

3. One-half per cent of the net proceeds from the sale of public securities.

4. With regard to other revenue received during the administration from sources other than those mentioned in the foregoing numbers, the judge shall allow from four to ten per cent, taking into consideration the income of the estate and the labor connected with the administration.

The judge may also authorize, when he considers it proper, that the administrator be paid his necessary traveling expenses incurred in the discharge of his duties.[1]

ART. 1033. The subaltern managers which the deceased may have had beyond the town where the proceedings are being held, for the care of his property, shall be retained at the same compensation and with the same powers which were granted them by the said deceased.

ART. 1034. The said managers shall render their accounts and forward what they may receive to the judicial administrator, considering themselves as employees of the latter, but he can not remove them except for good cause and with the authority of the judge.

The judicial administrator may, with the same authority and under his liability, fill the vacancies which may occur.

TITLE X.

TESTAMENTARY PROCEEDINGS.

SECTION I—*General provisions.*

ART. 1035. Testamentary proceedings may be voluntary or necessary.

ART. 1036. They are voluntary when instituted by a legitimate party.[2]

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[1] The administrator is not entitled to any other recompense but that mentioned in the different clauses of this article.—*Decision of March 21, 1873.*

The costs of collection constitute part of the administration, and if a decision allows a fixed amount for the expenses of the administration, the cost of collection can not be included therein.—*Decision of March 29, 1884.*

[2] Until the action becomes prescribed, the institution of voluntary testamentary proceedings is proper for the liquidation of the hereditary portions.—*Decision of May 28, 1888.*

ART. 1037. A legitimate party to institute testamentary proceedings shall be:

1. Any of the testamentary heirs.
2. The surviving spouse.
3. Any of the legatees of an aliquot part of the estate.[1]
4. Any creditor, provided he presents a written instrument conclusively proving his claim.[2]

ART. 1038. The voluntary heirs and the legatees of an aliquot part cannot institute voluntary testamentary proceedings when the testator has expressly prohibited it.

ART. 1039. Nor can such proceedings be instituted by creditors:

1. When their claims are secured by mortgage or other sufficient guaranty.
2. When otherwise the heirs give them sufficient security to secure their claims independently of the property of the deceased.

ART. 1040. Testamentary proceedings shall be called necessary in the cases wherein the judge must institute them *ex officio*. Such cases are:

1. When all or any of the heirs are absent and have no legal representative in the place where proceedings are to be instituted.
2. When the heirs, or any of them, are minors or incapacitated, unless they are represented by their parents.[3]

ART. 1041. In such cases any of the judges mentioned in rule 5 of article 63 may institute proceedings, taking the steps indicated in said rule and in article 958.

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[1] The right of the legatees of an aliquot part of the estate cannot be extended to anyone else, and it does not therefore include the legatees of specific and determined things, and therefore said legatees do not have the legal capacity to institute testamentary proceedings.—*Decision of June 22, 1880.*

[2] Although according to the Law of Civil Procedure heirs may, among others, institute testamentary proceedings, a simple statement of being an heir is not sufficient if impugned, because from such time there arises a question which must be previously decided, and which must be heard in an ordinary action, whether the right alleged is or is not true.—*Decision of September 29, 1877.*

Executors, no matter how full their powers may be, are not considered legitimate parties for the institution of voluntary testamentary proceedings.—*Decision of June 23, 1883.*

Heirs are considered legitimate parties for the institution of testamentary proceedings; but not the persons who believe themselves entitled to be heirs.—*Decision of January 28, 1889.*

[3] When the heir instituted dies before the testator, necessary testamentary proceedings may be instituted *ex officio*, because the unknown heir must be considered as absent.—*Decision of June 23, 1883.*

When the testator authorizes his executors to discharge the duties of accountants and liquidators of the estate, notwithstanding the fact that he leaves children under age, it is understood that he wishes to prevent the institution of necessary testamentary proceedings.—*Decision of June 30, 1862.*

A judgment deciding whether testamentary proceedings are necessary or voluntary is final for the purposes of annulment of judgment.—*Decision of April 15, 1862.*

ART. 1042. In the first case of article 1040, as soon as the relatives appear in person or by means of a legal representative, there shall be delivered to them the property and effects of the deceased, and the judicial intervention shall cease unless requested by any of the legitimate parties for the purpose of instituting voluntary probate proceedings.

ART. 1043. Even though the heirs are minors or incapacitated, necessary testamentary proceedings can not be instituted, if such proceedings have been expressly prohibited by the testator.

If the provisional measures referred to in article 1041 have been commenced, they shall be suspended as soon as said prohibition is proven by a copy of the will.

ART. 1044. When the testator has forbidden such judicial intervention in his will, in order that such prohibition may produce the effects mentioned in the foregoing article and in article 1038, it shall be neces sary that he shall have appointed one or more persons, duly empowered, so that either in the character of executors, accountants, or any other capacity they may execute extrajudicially all the operations in the administration of the estate.[1]

ART. 1045. Should the testator have established rules distinct from those prescribed in this law for the inventory, appraisement, liquidation, and partition of his property, the voluntary testamentary heirs and the legatees shall respect them and submit thereto.

The same rule shall apply to forced heirs provided that their *légitimes*[2] are not injured or damaged.[3]

ART. 1046. The interested parties may, at any stage of voluntary testamentary proceedings, terminate the same and make such agreements as they may consider proper.

For this purpose, in addition to the heirs and legatees, the creditors who may have instituted the proceedings and the surviving spouse shall be considered interested parties.

Should they request it by common consent, the judge shall order the proceedings closed and the property placed at the disposal of the heirs.

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[1] Articles 1045 and 1044 of the law of procedure do not affect the absolute right of a forced heir to institute universal testamentary proceedings.—*Decision of July 5, 1887.*

The second paragraph of article 1057 of the Civil Code not only confirms the provisions of this article, but extends the same in order to prevent judicial intervention and even approval, if the testator has prohibited it, and notwithstanding the provisions of article 1048.

[2] Légitime: That portion of a parent's estate of which he cannot disinherit his children without a legal cause.

[3] The provisions of article 1045 apply only to the case that a testator has established rules distinct from those prescribed in the law for the inventory, appraisement, and division of his property, affecting the form or manner of performing these acts, and not the absolute right of forced heirs to institute the said universal proceedings.—*Decision of July 5, 1887.*

ART. 1047. In the necessary proceedings, after the judicial inventory and deposit of the property have been made, as prescribed in article 1094, the persons interested may also desist from further proceedings, in order to attend extra-judicially all other steps in the settlement of the estate.

In such case the judge shall not place the property at the disposal of the heirs until after the partition thereof has been approved.

ART. 1048. The liquidations and partitions of the inheritance made extra-judicially, even though made by accountants appointed by the testator, must be presented for judicial approval, providing that a minor, an incapacitated person, or an absentee whose residence is unknown, has any interest therein as an heir or legatee of an aliquot part thereof.

ART. 1049. In order to obtain said approval, the procedure prescribed in articles 1076 et seq. shall be observed.

Partitions made by the testators themselves are not included in the provisions of this and the foregoing article, and do not require judicial approval.[1]

ART. 1050. To minors, incapacitated persons, or absentees are reserved the rights granted them by law in addition to those vested in them by the provisions of this title.

ART. 1051. Testamentary proceedings do not debar heirs from exercising at the proper time and in the proper manner the right to deliberate or the benefit of inventory.

When instituting proceedings, they may request that the legal term for deliberating be granted them, or state that they accept the inheritance under the benefit of an inventory.[2]

In either case, the inventory having been regularly made, the judge shall order that it be submitted to them so that they may decide what they may consider most conducive to their interests.

ART. 1052. Estates of deceased persons may be declared insolvent or in bankruptcy, in the same manner as individuals, in which case they shall be subject to the procedure prescribed for the said proceedings.

SECTION II.— *Voluntary testamentary proceedings.*

ART. 1053. He who institutes voluntary testamentary proceedings must present the death certificate of the person whose succession is in question, and if this be impossible, another document or proof of death, and the will of the deceased.

ART. 1054. If such person be a legitimate party, and the requisites mentioned in the foregoing article are complied with, the judge shall order that the petition made in his name be ratified.

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[1] See arts. 1056 and 1057 of the Civil Code.

[2] See art. 1019 of the Civil Code.

This ratification having been made, the judge shall consider proceedings instituted, and shall order the heirs, the legatees of aliquot parts, and the surviving spouse, if there be one, to be formally cited to appear, and also, in a proper case, the creditors who may have instituted the proceedings.

ART. 1055. If there be any of said heirs or legatees who, by reason of being minors or incapacitated, have a tutor or curator, the citation shall be served upon the latter.

Should they have no tutor or curator, one shall be appointed, or they shall be required to appoint one according to law, unless they are represented by their parents.

ART. 1056. When the tutor, curator, father, or mother should have an interest in the estate incompatible with that of the minor or incapacitated person whom they represent, a special curator *ad litem* shall be appointed according to law, whose intervention shall be limited to the acts wherein such incompatibility exists.[1]

ART. 1057. The heirs and other absent interested parties who may have a known place of residence shall be cited to appear personally.

Those who have no known residence shall be cited by means of edicts posted in the public places and inserted in the official newspapers of the locality where the proceedings are pending, if there be any, and in the *Boletin* of the province, or in its absence, in the *Gaceta* of the general government. Should the judge consider it necessary, in view of the circumstances of the case, the edict shall be published in the *Gaceta de Madrid* or in the last place of residence of the absentee.

ART. 1058. The deputy public prosecutor shall also be cited to appear in order to represent the persons interested in the estate who are minors or incapacitated and have no legal representative, the absentees whose place of residence is unknown, and those who, requiring a citation in person by reason of their having a known residence, can not be found at the place where the proceedings are being held.

ART. 1059. The representation of the deputy public prosecutor shall cease—

With regard to minors and incapacitated persons, as soon as a tutor or curator has been appointed for them.

With regard to absentees whose whereabouts is unknown, as soon as they appear in the proceedings or can be cited personally, although they should afterwards again absent themselves.

With regard to absentees cited personally, as soon as they appear, or twenty days from the time of the citation if they reside in the territory of the respective island, two months if they reside in Porto Rico and must claim their rights in Cuba, or vice versa, and six months if residing in any other place.

[1] See art. 165 of the Civil Code.

In the last case the proceedings shall be continued in default without further citation of parties properly cited and who have not appeared.

ART. 1060. If the person instituting the action should request at the proper time a judicial supervision of the estate, it shall be so ordered, and the steps prescribed in article 958 shall be taken in such manner as to cause the least possible injury.[1]

ART. 1061. Said intervention can only be ordered for the judicial preparation of the inventories, when requested after the thirty days following the death of the testator, or from the time when notice of the death has been received.

ART. 1062. The court clerk shall be commissioned to make the judicial inventory, without prejudice to the right of the judge to be present at the making thereof, in whole or in part, when one of the interested parties requests it and he considers it necessary.

ART. 1063. The court clerk shall commence to make the judicial inventory within eight days after the making thereof was ordered, fixing a day and hour therefor which shall be communicated to the persons interested when citing them to appear for said purpose.

ART. 1064. The following persons shall be cited to appear at the making of the inventory:

1. The heirs or their legal representatives who may be at the place where the proceedings are pending, or who may have entered their appearance of record, and the deputy public prosecutor (*promotor fiscal*) for the absentees, if there be any.

2. The surviving spouse, or his or her legal representative.

3. The legatees of an aliquot part.

4. The creditors who may have instituted the proceedings or who may have been admitted therein as legitimate parties.

ART. 1065. All the persons mentioned in the foregoing article having been cited to appear, at the specified day and hour the court clerk shall proceed, with those who may be present, to make the inventory,

[1] As these proceedings are not the legal means to question and disturb rights of which third persons are possessed and in quiet enjoyment, but only a series of judicial acts prescribed by law in order that, at the instance of those having a right to institute the said proceedings, the inheritance be distributed among them when they have not been able to come to an agreement as to its extrajudicial partition, the intervention authorized by the law of civil procedure must be limited to the property and rights which have not left the possession of the testator and which are not possessed under a more or less questionable title by third persons, without prejudice to the right of the heirs to institute the proper actions for the purpose of recovering for the inheritance such property as rightfully belongs to the same, as neither this law nor jurisprudence denies to third persons who are prejudiced, when such principles are violated, the right to appear in such action, not as legitimate parties in the question of the partition of the inheritance, but in view of the right which they have, not to be dispossessed or disturbed in their possession until they have been heard and defeated in court.—*Decision of December 26, 1876.*

which shall contain a description of the property of the estate according to the following order:

1. Cash.
2. Public securities.
3. Jewelry.
4. Live stock.
5. Products.
6. Personal property.
7. Real estate.
8. Rights and actions.

All shall be stated in the list, which must be made with proper clearness and precision, and if the inventory can not be concluded on the day appointed it shall be continued on the following days.[1]

ART. 1066. There shall also be made with the same care a special inventory of the written instruments, documents, and important papers that may be found.

ART. 1067. After the measures prescribed in the foregoing articles have been performed, the judge shall call a meeting of the persons interested, naming a day within the next eight days, so that they may agree upon the administration of the estate, its custody, and preservation.

ART. 1068. If such agreement can not be reached, the judge shall decide what shall be done according to the circumstances, subject to the following rules:

1. The cash and public securities shall be deposited in the public establishment provided for this purpose.

2. The jewelry, personal property, live stock, and products collected shall be deposited, the depositary being required to give proper security.

3. The widower or widow, or, in their absence, the interested person who has the largest interest in the estate, if in the judgment of the judge he possesses the capacity necessary to discharge the duties of the office, shall be appointed administrator.

4. If these requisites should not be possessed by the person having the greatest interest in the estate, or if the interest of all the persons in interest, or some of them, should be equal, the judge may appoint any one of said persons, or a disinterested party.

5. Whoever be the administrator appointed, he shall furnish security sufficient to answer for the personal property he may receive and for one year's rent of the real estate, unless the interested parties waive the security by common consent.

6. If no agreement is reached as to this point, the security shall be

[1] The inventory does not become null and void if the order prescribed in this article is not observed, provided that all the property is therein described.—*Decision of June 4, 1867.*

in proportion to the interest in the estate of those who refuse to relieve him of this obligation.[1]

ART. 1069. At the meeting referred to in article 1067 the interested parties must also agree as to the appointment of one or more auditors to make the partition of the estate. Should they not so agree, each party or group of parties having equal interests in the estate shall designate an auditor, and efforts shall be made to secure an agreement to appoint an auditor to settle differences, who must be an attorney.

In courts where there still exist judicial auditors by reason of an alienated office,[2] and until said offices have reverted to the State they shall continue discharging the duties which this law confers upon the auditors appointed by the parties.

Judicial auditors by reason of an alienated office may be challenged for the same causes and in the same manner as experts.

ART. 1070. The parties attending said meeting shall also agree to the appointment of the experts to be employed by the auditors for the purpose of appraising the property, or they may authorize the latter to appoint one or more by common consent and for each to appoint his own, if an agreement can not be reached.

ART. 1071. If any of the persons present at the meeting should refuse to appoint an auditor or expert, he shall be considered as agreeing to the appointments made by the other interested parties.

ART. 1072. If no agreement can be reached at the meeting on the appointment of an auditor-umpire, the provisions of articles 615 to 624 of this law shall be observed. The same shall be done in case the experts do not agree in their appraisements.

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[1] Neither the judicial administrator nor his bondsmen have any other obligations than those specified in the order of appointment.—*Decision of November 24, 1883.*

A judgment which declares valid the proceedings had for the appointment of a depositary of the property of an estate does not put an end to the main proceedings, nor does it make its continuation impossible and therefore it is not definite for the purposes of annulment of judgment.—*Decision of March 6, 1885.*

[2] One of the evils from which Spain has suffered since the earliest period was the alienation of offices and employments of all kinds, there being included therein the offices of court clerks, solicitors, and even offices of the department of public prosecution, it having reached such a point that in consideration of a sum of money the right would be granted to fill all the offices of court clerks in an entire province.

Formerly, the royal power being absolute, it was considered that the King had the power to dispose at will of everything that belonged to the nation, from which was derived the privilege not only to sell all public offices and employments for the purpose of covering the deficit of the Treasury, but also to donate them gratuitously or as a remuneration for other services, there often being new offices created for the sole purpose of placing them upon the market.

The evils of this system are still being felt, as a great many offices are in the hands of private individuals by virtue of ownership notwithstanding the fact that their reversion to the State has been recognized as a necessity, their owners to be indemnified for the loss of said offices in the manner considered most convenient.—*Alcubilla, Diccionario de Legislación y Jurisprudencia.*

ART. 1073. After the auditors or, in a proper case, the experts have been appointed, and after they have accepted their appointments, the record of the proceedings shall be delivered to the former, and all matters, documents, or papers which they may require for making the inventory, in case it has not been made, and for making the appraisement, liquidation, and partition of the estate shall be placed at the disposal of both the auditors and experts.

ART. 1074. The acceptance of the auditors shall give the right to each of the interested parties to compel them to fulfill their duties, which must be concluded within a reasonable period, taking into account the scope and difficulty of the proceedings.

ART. 1075. Also, at the instance of an interested party, the judge may fix a time within which the auditors shall submit their report of the partition, and if they do not do so, they shall be liable for all losses and damages.

ART. 1076. The report of the partition shall be submitted by the auditors drafted on ordinary paper and signed by all of them, and shall contain:

1. A statement of the property which, in the opinion of each, is subject to partition.

2. The appraisement of the property included in said statement.

3. The liquidation of the estate, its partition, and the award made to each of the participants.

ART. 1077. The auditor-umpire, summarizing the questions on which the parties agree, shall confine himself, in accordance with law, to settling such proceedings in which there is disagreement, endeavoring to avoid both the nondivision as well as the excessive partition of the landed property.

ART. 1078. A statement of the partition made by the auditors shall be subject to inspection in the office of the clerk of the court for eight days, the parties being notified thereof.

ART. 1079. This delay shall be dispensed with if all the parties appear in court, either in person or in writing, stating their agreement with any of the plans of partition. In the second case it shall not be necessary to ratify it when all have signed the instrument or presented it in person, which fact shall be certified to by the court clerk in a written statement.

ART. 1080. Said period having elapsed without objection, or as soon as the parties interested have stated their agreement, the judge shall order the record brought before him and shall render a ruling approving the statement of partition, and ordering it to be placed on record upon payment of the amount due for the proper stamped paper.[1]

ART. 1081. All questions in dispute between the auditors shall be discussed and decided in the statement of the umpire.

[1] See articles 1051 et seq. of the Civil Code.

ART. 1082. If within the period fixed in article 1078 the parties raise no objection to the plan of the auditor-umpire, or state their agreement with any other, the judge shall approve the same and shall order it to be recorded, upon the payment of the amount due for the proper stamped paper.

ART. 1083. If the interested parties or any of them request, within eight days, that the record of the proceedings and the statement of the partition be delivered to them for examination, the judge shall order said delivery for a period of fifteen days for each party making such request.

ART. 1084. At the expiration of the fifteen days mentioned in the foregoing article, without any objections being filed, the record shall be recovered, without the necessity of compulsory process, and the statement of partition shall be approved in the manner provided for in article 1080.

ART. 1085. If any objection to the statement of partition made by the umpire-auditor should be filed against the same within the period allowed therefor, the judge shall call a meeting of the interested parties and said auditor, so that, after mutual deliberation, they may agree upon what they may deem most convenient.

The proper minutes shall be made of this meeting, which shall be signed by all those present.

ART. 1086. If all the interested parties should agree upon all questions raised, the agreement shall be carried into effect, and the umpire-auditor shall insert the changes agreed upon in his statement of partition.

ART. 1087. If no agreement is reached, the procedure prescribed for the proper ordinary action, according to the amount involved, shall be followed, and the papers shall first be delivered to the parties who first requested the delivery to them of the partition reports according to article 1083.

ART. 1088. The representative of the department of public prosecution shall also be heard when the appraisement made and included in the statement of partition is impugned for bribery or fraudulent agreements between the arbitrator expert and one or more of the parties in interest for the purpose of increasing or reducing the value of any part of the property.

ART. 1089. If sufficient reasons exist for believing that bribery or fraudulent agreements have occurred in making the appraisement, the judge shall order that an authenticated copy be made of all that may be necessary in order to institute criminal proceedings against the guilty parties.

ART. 1090. If the interested parties cancel the appraisement impugned, referred to in the foregoing article, and have another made within the time prescribed for the introduction of evidence, the action shall be terminated by a judgment. Otherwise the judgment shall be suspended

until a final judgment is rendered in the proceedings instituted by virtue of the provisions of said article.

ART. 1091. After the partition has been definitely approved, there shall be delivered to each of the interested parties the part adjudged to him, together with the title deeds, after the court clerk has entered thereupon a memorandum of the adjudication.

As soon as said partition has been recorded, there shall be given to the participants requesting it a certified copy of their interest and their respective adjudication.

ART. 1092. When the proceedings have been instituted at the instance of one or more creditors, the delivery of the property shall not be made to any of the heirs or legatees until the creditors have been paid in full or have been given satisfactory security for their claims.[1]

SECTION III.—*Necessary testamentary proceedings.*

ART. 1093. Necessary testamentary proceedings shall only be instituted in the cases prescribed in article 1040, subject to the limitations mentioned in article 1043.

ART. 1094. After the necessary steps have been taken for the security of the property, books, and papers, referred to in article 1041, these proceedings shall be continued as prescribed for voluntary proceedings, with the following modifications:

1. The inventory shall be judicially made.

2. The property shall always be placed in deposit, without any agreement to the contrary being permissible.

3. The administrator shall furnish sufficient security for the property administered by him. If the interested parties who are of age have relieved him of this obligation, the security then shall be in proportion to the participation which the minors, incapacitated persons, or absentees have in the estate, and it can not in any case be waived.

Until these measures have been adopted the judicial intervention can not cease, if requested as prescribed in article 1047.

SECTION IV.—*Administration of testate inheritances.*[2]

ART. 1095. In all the testamentary proceedings the dispositions of the testator relating to the administration of his estate shall be observed and complied with until said estate is delivered to the heirs.

ART. 1096. If the testator should have made no disposition in this regard, the administration of the estate shall be governed by the rules prescribed for intestate inheritances in Section IV of the foregoing

[1] See articles 1026, 1031, 1032, and 1034 of the Civil Code with regard to the rights of creditors, and articles 1082 et seq. with regard to the payment of hereditary debts.

[2] See articles 965, 966, paragraph 2, 967, 1020, and 1026 et seq. of the Civil Code relating to the administration of hereditary property.

title, the provisions of which shall be applicable thereto, with the exception of those of article 1007.

ART. 1097. The administrator of the estate shall represent the same only in matters relating directly to the administration thereof, its custody and preservation, and for that purpose he may and must take the necessary steps and institute such proceedings as may be proper.

ART. 1098. When judicial intervention is being had upon the property of the estate, the heirs may be present at the opening of the correspondence, which, according to article 968, must be done in the presence of the administrator.

ART. 1099. At the instance of the interested parties, the judge may order that there be delivered to the heirs and legatees and to the surviving spouse for maintenance, from the income of the administration, a sum not to exceed the net product of that part of the estate to which they may be entitled.

The judge shall fix the amount and the period when the administrator shall make such payments.[1]

TITLE XI.

ADJUDICATION OF PROPERTY TO PERSONS NOT DESIGNATED BY NAME.[2]

ART. 1100. When a testator has ordered that the whole or a part of his property be distributed among his relatives within a certain degree, among the poor or other persons under certain conditions, but without designating them by name, in order to establish the legal right and make the adjudication of the property, the procedure established in this title shall be observed.

ART. 1101. The same procedure shall be employed for the adjudication of the property of any foundations to be distributed among the

[1] Maintenance must be allowed from the date it is judicially requested, because it is to be presumed that it is not needed before it is thus requested, no matter if it was requested extrajudicially.—*Decision of April 15, 1885.*

It is incorrect to suppose that article 1099 of the Law of Civil Procedure grants to the judge of first instance the exclusive jurisdiction to fix and regulate the amount to be allowed for maintenance to the heirs and legatees and to the surviving spouse, because neither is this declaration made in the said article nor can it be taken as granted, because as the ruling ordering and fixing the amount of said maintenance may be appealed from for review and for a stay of proceedings, as soon as appealed from it is the duty of the audiencia to take cognizance of the entire matter in second instance, without any limitation whatsoever and vested with the same powers as the judge to consider and determine the amount thereof.—*Decision of March 26, 1888.*

[2] In order to institute the universal proceedings referred to in this title, it is an indispensable requisite that one of the cases referred to in the first two articles of the same is attendant; that is to say, that the testator has ordered that all or a part of his property be distributed among his relatives within a certain degree, among the poor or other persons, but without stating their names, etc.—*Decision of March 2, 1887.*

relatives designated by the founder or by law, and in similar cases where the courts are called upon to adjudicate upon a question of right.

ART. 1102. These universal proceedings[1] may be instituted by any or all the persons who consider themselves as having any right to the property, as well as by the representative of the department of public prosecution on behalf of the State, provided the testator has not othwise disposed.

ART. 1103. The petition shall be prepared according to the provisions of article 523, and shall be accompanied by the will or foundation and all other documents upon which the action, as well as the right of the petitioner to the property, may be based.

A copy of the petition on ordinary paper shall accompany the original.

ART. 1104. If from the said documents it should appear that the petition is based upon any of the cases referred to in articles 1100 et seq., the judge shall admit it, ordering that those who believe themselves entitled to the property be called by edicts to appear and assert such rights within a period of six months, counted from the date of the publication of the same in the *Gaceta de Madrid*.

ART. 1105. The edicts referred to in the foregoing article shall be published and posted in the public places of the locality where the proceedings are being held, in the town or towns where the property is located, and in the other places where, taking into consideration the birthplace of the testator or the object of the institution, it may be presumed that such persons reside.

They shall be inserted also, if there be any, in the *Boletin Oficial* of the province or provinces to which they appertain, in the *Gaceta* of Habana or of Porto Rico, in a proper case, and in that of Madrid, attaching to the record a copy of the periodical in which the publication may be made.

ART. 1106. The edicts shall contain the name, surname, and birthplace of the testator or founder, the date of the will or foundation, and anything else that may furnish information as to the object of the institution, and as to the persons entitled to participate in the property, as well as the name and surname of the person or persons who may have instituted the proceedings, and their degree of relationship to the testator or the reasons upon which they base their rights.

ART. 1107. The representative of the department of public prosecution, on behalf of the State, shall be a party to these proceedings until the same are concluded by a final judgment.

For such purpose the deputy public prosecutor of the court shall be cited and summoned to appear as soon as the petition has been admitted,

[1] See note to article 166.

and the copy of the latter presented by the plaintiff shall be delivered to him and he shall be notified of all the orders therein issued.

ART. 1108. All parties who appear in the action alleging a right to the property must file the documents upon which they base their claims, and in a proper case the corresponding genealogical tree.

Should they not have any of these documents at hand, they shall indicate the archives in which they may be filed, offering to present them at the proper time.

The instruments and documents shall be attached to the record in the order in which they are presented.

ART. 1109. Upon the expiration of the period prescribed in the first edicts, a second call shall be made for the same time, in the same manner, and with the same publicity, as prescribed in article 1105.

In these edicts shall be stated the fact that it is the second call to appear and the names of the persons who may have already appeared alleging a right to the property, with a statement of the degree of relationship or the reasons upon which they base their claim.

ART. 1110. At the same time and with the same requisites a third call shall be made, upon the expiration of the period of the second, stating in the same that it is the third and last, and adding the admonition that any party who does not enter appearance within this third and last period shall not be heard in the proceedings.

ART. 1111. After the court clerk shall have certified to the fact that the periods required by the three calls have expired, and that the petitions of all persons appearing have been attached to the record, the said record shall be given to the deputy public prosecutor for the period which the judge may consider necessary, but which can not exceed twenty days, in order that he may report as to whether universal proceedings are proper, and if the parties who have appeared, or any of them, possess the qualifications necessary for requesting an adjudication of the property.

ART. 1112. Should the deputy public prosecutor object because of the impropriety of the proceedings, or because none of the claimants has the qualifications required in order to participate in the property, the judge shall order that the parties be notified so that they may defend their rights in an ordinary action, should they so desire.

ART. 1113. Should the deputy public prosecutor make no objection, and if there be two or more claimants, the judge shall order a meeting to be held on a fixed day and hour within the following fifteen days.

At this meeting, which may be attended by the deputy public prosecutor and the counsel of the parties, they shall discuss their rights to the property, and the results shall be stated in the minutes, which shall be signed by all those present.

ART. 1114. If in the meeting there should be a unanimous agreement as to the right to the property, and as to the participation of each,

3. After two creditors have spoken in favor and two against, if this privilege has been requested, and after the debtor or his representative has spoken as often as may be considered necessary to reply to the remarks made, and explain any doubts that may arise, the judge, when he considers that the propositions have been sufficiently discussed, shall declare the discussion closed.

4. The debtor may modify his proposition or propositions in view of the result of the discussion, or may insist upon those which he may already have made, and without further discussion the judge shall clearly and precisely put the several propositions before the meeting for vote upon the same.

5. The vote shall always be taken by a call of names and shall be inserted in the minutes, the vote of the majority being decisive.

6. In order to form a majority it is necessary:

First. That two-thirds of the votes of the creditors taking part in the voting unite upon the same proposition.

Second. That the credits of those whose votes form the majority amount to at least three-fifths of the total liabilities of the debtor.

7. After the vote has been announced, all protests which may be made against the majority vote shall be admitted and recorded and the meeting shall be closed.

8. The proper minutes shall be drafted making a succinct statement of all the proceedings of the meeting, inserting literally the proposition or propositions which have been voted upon, with the votes cast, which, after having been read and approved, shall be signed by the judge, by all those who may have voted, and by one of the persons present for those who can not write, at their request, and by the court clerk.

ART. 1138. Creditors for personal services, maintenance, funeral expenses, drawing of the last will, and for preliminary testate or intestate proceedings, as well as those secured by a legal or voluntary mortgage, need not attend the meeting or may abstain from taking part in the voting.

If they do not attend, they shall not be bound to accept any agreement therein adopted.

If they take part in the voting, they shall be bound in the same manner as the other creditors.

ART. 1139. The wife of the debtor can not take part in the discussion nor in the voting of the meeting in which composition or respite is discussed.

ART. 1140. The proposition of composition or respite shall be considered as rejected if the number of creditors required for holding a meeting does not attend, or if the two majorities mentioned in rule 6 of article 1137 are not received in favor thereof, even if the contrary vote does not receive such majority.

not be granted him unless he should request it; but he shall be notified of all the orders issued until final judgment is rendered.

6. The petitions of the claimants shall be drafted in the manner prescribed for complaints, accompanied by as many copies thereof as there are other litigants, to whom they shall be delivered for the purposes referred to in article 519 with regard to successive services in which the record shall no longer be delivered.

7. As soon as all the claimants have presented their claims, the proceedings shall be continued according to the procedure prescribed for ordinary actions of greater or lesser import, as the case may be, after answer is made to the complaint; and the judge shall order the interested parties, who have not already done so, that those making common cause shall, in the further prosecution of the same, litigate jointly and with the same counsel.

ART. 1119. When the right of one or more of the claimants is acknowledged, the same judgment shall determine what may be proper in order to insure the fulfillment of the religious bequests against the estate, even though no request is made therefor and no discussion thereupon has taken place in the proceedings.

ART. 1120. As soon as the judgment becomes final it shall be executed in the proper manner, with the intervention of the representative of the department of public prosecution only in case it is necessary to insure the fulfillment of religious bequests or any others in favor of the State or of some corporation or institution dependent thereupon.

ART. 1121. When the estate is to be divided among several interested parties, and judicial intervention is requested or becomes necessary, the procedure prescribed for testamentary proceedings shall be observed.

ART. 1122. With regard to the administration of the property which may be the object of these proceedings, the dispositions of the testator shall be observed and enforced.

If he should have left no instructions, or if the property has for any reason been abandoned, the judge shall take the necessary measures for the security, custody, and preservation of the said property, the provisions established for intestate administrations being observed.

ART. 1123. The judge shall also see that all charges imposed upon the estate by the testator or founder shall be punctually paid out of the income derived therefrom.

ART. 1124. No one shall be admitted as a party to these proceedings who did not enter appearance during the periods fixed in the edicts, even though they allege that the judicial calls did not come to their knowledge, but they shall reserve their right and institute an ordinary action thereupon against the interested party or parties to whom the property has been adjudicated, as soon as the judgment becomes final.

ART. 1125. Notwithstanding the provisions of the foregoing article, if in the cases referred to in articles 1112 and 1116, an ordinary action has been instituted in order to secure a declaration upon the right to the property, any person who believes himself to have a preferential right thereto may appear in such action and shall be considered a party thereto, whatever be the status thereof, but in no case shall there be any retrogression in the proceedings, the provisions of articles 765 *et seq.* being observed.

ART. 1126. Neither shall other actions be admitted which, during the prosecution of these universal actions, may be separately presented, either in the same or any other court by parties not appearing in said universal actions and presented for the purpose of securing a declaration of their rights to the property.

ART. 1127. Such actions shall be suspended until a final judgment is rendered in the universal proceedings, and thereafter said actions shall be admitted as against the parties in favor of whom the declaration of right and the adjudication of the property may have been made in the judgment.

TITLE XII.

INSOLVENCY PROCEEDINGS.

SECTION I.—*Composition and respite.*

ART. 1128. Every debtor, not a merchant, before presenting himself as an insolvent, may judicially request of his creditors composition and respite, or both.

This request must necessarily be accompanied by—

1. A statement giving the names of all his creditors, their domicile, the origin, time, or date of the credits, and the amount of each one.

2. Another detailed and exact statement of his property and its market value according to his opinion. He can omit from this statement only such of his property as may be exempt from seizure according to article 1447.

These statements shall be signed by the debtor or by his representative having a special power of attorney therefor.

ART. 1129. The judge shall act upon said request, and shall immediately order a meeting of the creditors to be called, fixing a period therefor, which can not exceed thirty days, in order that those who reside in the respective territory of the islands of Cuba and of Porto Rico may attend, and the place where and the day and hour when it is to be held.

ART. 1130. At the request of the debtor, the creditors residing beyond the territory mentioned in the foregoing article shall be personally cited to appear, in which case the period above mentioned may

be extended to such time as the judge may consider necessary to enable them to attend the meeting.

ART. 1131. Only the creditors included in the statement filed by the debtor shall be cited to appear and attend said meeting.

The citation of persons having a known domicile shall be made personally by means of a writ. Others shall be cited by means of edicts in the manner prescribed in article 269.

ART. 1132. In the writs of citation, as well as in the edicts, besides making the statement prescribed in article 272, it shall be ordered that the creditors appear at the meeting with the evidence of their claims, without which requisite they shall not be permitted to attend the same.

ART. 1133. If executions are pending against the debtor, they shall not be consolidated with this proceeding, but the course thereof shall be suspended, if the executions are in process of enforcement and before the sale of the property, if the debtor so requests of the judge taking cognizance of the proceedings for composition and respite, who shall give notice thereof to the other judges in writing.

ART. 1134. Executions against property, specially mortgaged, are excepted from the preceding provisions.

The suspension granted by virtue of the provisions of the foregoing article shall be raised *de jure* if two months should elapse without the composition and respite being granted, or as soon as it is denied.

ART. 1135. The creditors may be represented at the meeting by a third person, duly authorized by power of attorney, which document must be presented in order to be attached to the record.

Persons authorized to appear for more than one creditor shall have but one personal vote, but the claims they represent shall be taken into consideration to form the majority of the amount represented.

ART. 1136. In order that said meeting may be held it is necessary that the number of creditors attending the same should represent at least three-fifths of the liabilities.

ART. 1137. The meeting shall be held on the day fixed, under the chairmanship of the judge and with the assistance of the court clerk, subject to the following rules:

1. The court clerk shall make a memorandum of the persons present and their claims which he shall insert in the minutes of the meeting, and at the same time the judge shall examine the written evidence of the credits and the powers of attorney, in a proper case. If those who have complied with these formalities represent at least three-fifths of the liabilities, the judge shall declare the meeting open.

2. Immediately thereafter the articles of this law having reference to the object of the meeting, the petition of the debtor, and the statement of the debts and property filed with said petition, shall be read and the discussion opened.

3. After two creditors have spoken in favor and two against, if this privilege has been requested, and after the debtor or his representative has spoken as often as may be considered necessary to reply to the remarks made, and explain any doubts that may arise, the judge, when he considers that the propositions have been sufficiently discussed, shall declare the discussion closed.

4. The debtor may modify his proposition or propositions in view of the result of the discussion, or may insist upon those which he may already have made, and without further discussion the judge shall clearly and precisely put the several propositions before the meeting for vote upon the same.

5. The vote shall always be taken by a call of names and shall be inserted in the minutes, the vote of the majority being decisive.

6. In order to form a majority it is necessary:

First. That two-thirds of the votes of the creditors taking part in the voting unite upon the same proposition.

Second. That the credits of those whose votes form the majority amount to at least three-fifths of the total liabilities of the debtor.

7. After the vote has been announced, all protests which may be made against the majority vote shall be admitted and recorded and the meeting shall be closed.

8. The proper minutes shall be drafted making a succinct statement of all the proceedings of the meeting, inserting literally the proposition or propositions which have been voted upon, with the votes cast, which, after having been read and approved, shall be signed by the judge, by all those who may have voted, and by one of the persons present for those who can not write, at their request, and by the court clerk.

ART. 1138. Creditors for personal services, maintenance, funeral expenses, drawing of the last will, and for preliminary testate or intestate proceedings, as well as those secured by a legal or voluntary mortgage, need not attend the meeting or may abstain from taking part in the voting.

If they do not attend, they shall not be bound to accept any agreement therein adopted.

If they take part in the voting, they shall be bound in the same manner as the other creditors.

ART. 1139. The wife of the debtor can not take part in the discussion nor in the voting of the meeting in which composition or respite is discussed.

ART. 1140. The proposition of composition or respite shall be considered as rejected if the number of creditors required for holding a meeting does not attend, or if the two majorities mentioned in rule 6 of article 1137 are not received in favor thereof, even if the contrary vote does not receive such majority.

ART. 1141. If the decision of the meeting should be a refusal of the composition or respite or no decision was reached on account of a lack of number, the proceedings shall be closed without further remedy, and the persons interested shall be at liberty to make use of the rights to which they may be entitled.

ART. 1142. If the decision should be favorable to the debtor, it may be objected to within the ten days following the date of the meeting by any of the creditors personally cited who did not attend the same, or who, having attended, dissented from and protested against the vote of the majority.

For this purpose such creditors may examine the decision of the meeting in the clerk's office.

ART. 1143. The creditors who were not personally cited to attend the meeting shall be notified of the favorable decision of the same, if the debtor requests it, within the three days following the holding of the meeting, if they reside at any of the places mentioned in article 1145.[1]

ART. 1144. When notice is served upon them they shall be informed therein, under the penalty of nullity, that if they do not object to said decision at once, or by appearing in person within the three days following, the same shall be binding upon them and they can not impugn it thereafter.

ART. 1145. In the cases referred to in the two foregoing articles the period within which objections may be made shall be fifteen days for the creditors who reside within the territory of the islands of Cuba or Porto Rico, and thirty-six days for those who, residing in either of them, must exercise their rights in the other, counting from the day of the service of the notification.

ART. 1146. The provisions of the three foregoing articles shall not be applicable to the creditors who reside in the Peninsula and the other Spanish territories of Europe or Africa, or in foreign lands, who shall

[1]Although according to article 903 the agreement is binding upon all creditors having claims of a date prior to the declaration of bankruptcy, who may have been cited according to law, or who having been notified of the approval of the agreement should not have objected thereto within the period prescribed in the law of civil procedure, when these formalities were not complied with in regard to a creditor who, notwithstanding the fact that his residence was known and was indicated in the credit document itself, was not personally cited to attend the meeting, and the debtor also failed to request, within the period fixed in article 1143 of the said law that he be informed of the favorable decision of said meeting, and the person interested was not able to exercise the right granted him by the articles following, there is no doubt that he is not prejudiced by the notice of the decision of the approval made to him extemporaneously and when he had already instituted the preliminary proceedings of an executory action, nor does the agreement arrived at have any efficacy with regard to him as prescribed by articles 1150 and 1151.—*Decision of September 27, 1889.*

reserve their rights against the debtor, notwithstanding the agreement, if they did not attend the meeting.

ART. 1147. The only causes for which agreements for composition or respite may be impugned are:

1. A defect in the forms employed for the calling, holding, and deliberations of the meeting.

2. Want of personal capacity or representative character in any person voting with the majority.

3. Fraudulent connivance between one or more creditors and the debtor to vote in favor of composition or respite.

A fraudulent increase of any claims in order to secure a majority of amounts.

ART. 1148. The objection shall be made according to the provisions of article 523, and shall be heard and determined according to the procedure prescribed for incidental issues, the defendant being the debtor, and the creditors who appear stating their decision to support the resolution of the meeting.

All those sustaining the same issue shall litigate jointly and be represented by the same counsel.

The judgment rendered may be appealed from for review and for a stay of proceedings.

ART. 1149. After the expiration of the ten days fixed in article 1142, and, in a proper case, the periods granted in article 1145, without any objection having been made, the judge shall order the record brought before him, and he shall render a ruling ordering that the agreement be carried out and declaring that the interested parties are bound thereby.

He shall also issue such orders at the instance of a legitimate party as may be proper for its execution.

ART. 1150. No remedy whatsoever shall lie against the ruling ordering that the agreement be carried out in the case of the foregoing article, and it shall be binding upon all the creditors included in the list furnished by the debtor, excepting such creditors only as are mentioned in article 1138 who may have abstained from voting and those who not having been personally cited for the meeting nor appeared at the same, did not receive the notice authorized by article 1143.

ART. 1151. These creditors and those not included in said list shall reserve their right against the debtor unimpaired notwithstanding the agreement, unless they expressly or impliedly concur therein.

ART. 1152. All the costs of these proceedings shall be taxed against the debtor who may have instituted the same.

The costs of incidental issues upon the objection to the agreement of the meeting may be taxed against the person who may have interposed such issues upon insufficient grounds.

ART. 1153. If the debtor should not fulfill, in whole or in part, the agreement of composition or respite, the creditors shall recover all the rights they may have had against the debtor before the agreement.

In such case the debtor may be declared an involuntary insolvent at the instance of the creditors, or any one of them, even though there be no execution pending against him.

SECTION II.—*Declarations of insolvency.*

ART. 1154. Insolvency proceedings may be voluntary or involuntary.

They shall be voluntary when the debtor himself institutes them by assigning all his property to his creditors.

They shall be involuntary when instituted at the instance of the creditors or any of them.[1]

ART. 1155. The petition of a voluntary insolvent shall be accompanied by the following, without which it can not be admitted:

1. A full and detailed signed statement of all his property, with the value at which he estimates the same. From this statement shall be excepted the property which, in accordance with article 1447, is not subject to execution.

2. A detailed statement of his debts, with their date and origin and the names and domiciles of the creditors.

3. A report containing the reasons which gave rise to his petition for a declaration of insolvency.

ART. 1156. A declaration of voluntary insolvency can only be made at the instance of one or more legitimate creditors who prove the following:

1. That two or more executions are outstanding against the debtor.

2. That no property has been found free from other charges, sufficient in value to cover the amount claimed.

In the case of article 1153 proof of these two facts shall not be necessary in order to make a declaration of insolvency.[2]

ART. 1157. A creditor who requests a declaration of insolvency must furthermore prove his personal capacity by attaching the title of his credit by virtue of which an execution may be proceeded with, or a certificate of the ruling by which, at his instance, the execution was ordered, if he does not request said declaration in the same action in which the execution issued.

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[1] Voluntary insolvency proceedings can not be instituted when there is no property to assign.—*Decision of February 28, 1885.*

[2] In involuntary insolvency proceedings the creditors are authorized to decide and agree upon what they may consider advisable, provided they do not violate any laws.—*Decision of January 4, 1859.*

When the purchaser of property of the insolvent is in question and not a creditor, the general principle of law is not applicable according to which all the creditors are obliged to submit to said proceedings, appearing in the order fixed in the classification, according to the character of their credits.—*Decision of June 18, 1878.*

ART. 1158. If the judge believes that the requisites demanded for the respective cases in the two foregoing articles have been fulfilled, he shall render a ruling declaring the insolvency and ordering that the steps mentioned in the following section be taken.

Otherwise he shall refuse to make the declaration, which decision may be appealed from for a review and for a stay of proceedings.[1]

ART. 1159. The ruling containing the declaration of insolvency shall immediately be communicated to the insolvent, who shall, by virtue thereof, become incapacitated for the administration of his property.

ART. 1160. The debtor may object to the declaration of insolvency made at the instance of his creditors, within three days after he has been notified thereof.

If the three days should pass without any objection being made, said declaration shall become final *de jure*.

ART. 1161. If the debtor should object within the proper time, the record shall be delivered to his solicitor for a period of four days, which can not be extended, in order that he may formulate his objections, after the separate record prescribed in the following article has been begun.

ART. 1162. While the objections of the debtor are being heard and passed upon, the execution of the measures taken and any other proper measures shall be proceeded with, in accordance with the provisions of the following section, for taking possession of the property, books, papers, and correspondence.

In order to do so a separate record shall be made with certified copies of the order of the declaration of insolvency, and of the proceedings which may have been had with said end in view.

ART. 1163. Said objection shall be heard and determined according to the procedure prescribed for incidental issues, but limiting to four days the period for the delivery of the record to the creditor, at whose instance the declaration of insolvency may have been made, and the period for the taking of evidence to a period of ten days, which can not be extended.

ART. 1164. Other creditors may be parties to said incidental issue, but those who oppose a declaration of insolvency must litigate with the debtor and be represented by the same counsel, while those who sustain the opposing creditor shall in the same manner unite with the latter.

The decision which may be rendered may be appealed from for review and for a stay of proceedings, without staying the separate proceedings referred to in the foregoing article.

ART. 1165. If the declaration of insolvency be vacated, as soon as the decision is final, a copy of the adjudging part thereof shall be

[1] An appeal for annulment of judgment does not lie from the rulings relating to declarations of insolvency.—*Decision of September 29, 1886.*

ART. 1153. If the debtor should not fulfill, in whole or in part, the agreement of composition or respite, the creditors shall recover all the rights they may have had against the debtor before the agreement.

In such case the debtor may be declared an involuntary insolvent at the instance of the creditors, or any one of them, even though there be no execution pending against him.

SECTION II.—*Declarations of insolvency.*

ART. 1154. Insolvency proceedings may be voluntary or involuntary.

They shall be voluntary when the debtor himself institutes them by assigning all his property to his creditors.

They shall be involuntary when instituted at the instance of the creditors or any of them.[1]

ART. 1155. The petition of a voluntary insolvent shall be accompanied by the following, without which it can not be admitted:

1. A full and detailed signed statement of all his property, with the value at which he estimates the same. From this statement shall be excepted the property which, in accordance with article 1447, is not subject to execution.

2. A detailed statement of his debts, with their date and origin and the names and domiciles of the creditors.

3. A report containing the reasons which gave rise to his petition for a declaration of insolvency.

ART. 1156. A declaration of voluntary insolvency can only be made at the instance of one or more legitimate creditors who prove the following:

1. That two or more executions are outstanding against the debtor.

2. That no property has been found free from other charges, sufficient in value to cover the amount claimed.

In the case of article 1153 proof of these two facts shall not be necessary in order to make a declaration of insolvency.[2]

ART. 1157. A creditor who requests a declaration of insolvency must furthermore prove his personal capacity by attaching the title of his credit by virtue of which an execution may be proceeded with, or a certificate of the ruling by which, at his instance, the execution was ordered, if he does not request said declaration in the same action in which the execution issued.

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[1] Voluntary insolvency proceedings can not be instituted when there is no property to assign.—*Decision of February 28, 1885.*

[2] In involuntary insolvency proceedings the creditors are authorized to decide and agree upon what they may consider advisable, provided they do not violate any laws.—*Decision of January 4, 1859.*

When the purchaser of property of the insolvent is in question and not a creditor, the general principle of law is not applicable according to which all the creditors are obliged to submit to said proceedings, appearing in the order fixed in the classification, according to the character of their credits.—*Decision of June 13, 1878.*

ART. 1158. If the judge believes that the requisites demanded for the respective cases in the two foregoing articles have been fulfilled, he shall render a ruling declaring the insolvency and ordering that the steps mentioned in the following section be taken.

Otherwise he shall refuse to make the declaration, which decision may be appealed from for a review and for a stay of proceedings.[1]

ART. 1159. The ruling containing the declaration of insolvency shall immediately be communicated to the insolvent, who shall, by virtue thereof, become incapacitated for the administration of his property.

ART. 1160. The debtor may object to the declaration of insolvency made at the instance of his creditors, within three days after he has been notified thereof.

If the three days should pass without any objection being made, said declaration shall become final *de jure*.

ART. 1161. If the debtor should object within the proper time, the record shall be delivered to his solicitor for a period of four days, which can not be extended, in order that he may formulate his objections, after the separate record prescribed in the following article has been begun.

ART. 1162. While the objections of the debtor are being heard and passed upon, the execution of the measures taken and any other proper measures shall be proceeded with, in accordance with the provisions of the following section, for taking possession of the property, books, papers, and correspondence.

In order to do so a separate record shall be made with certified copies of the order of the declaration of insolvency, and of the proceedings which may have been had with said end in view.

ART. 1163. Said objection shall be heard and determined according to the procedure prescribed for incidental issues, but limiting to four days the period for the delivery of the record to the creditor, at whose instance the declaration of insolvency may have been made, and the period for the taking of evidence to a period of ten days, which can not be extended.

ART. 1164. Other creditors may be parties to said incidental issue, but those who oppose a declaration of insolvency must litigate with the debtor and be represented by the same counsel, while those who sustain the opposing creditor shall in the same manner unite with the latter.

The decision which may be rendered may be appealed from for review and for a stay of proceedings, without staying the separate proceedings referred to in the foregoing article.

ART. 1165. If the declaration of insolvency be vacated, as soon as the decision is final, a copy of the adjudging part thereof shall be

[1] An appeal for annulment of judgment does not lie from the rulings relating to declarations of insolvency.—*Decision of September 29, 1886.*

inserted in the other separate records of the insolvency proceeding, and the judicial intervention ceasing, the funds, property, books, papers, and correspondence over which such intervention was had shall be delivered to the debtor by the depositary and court clerk.

The said depositary, if he performed any administrative functions, shall render an account thereof to the debtor.

ART. 1166. If the declaration of insolvency should have been published, the decision vacating the same shall also be published in the same manner, if the debtor should request it.

ART. 1167. In the case of article 1165 the debtor shall reserve his right to demand indemnification for losses and damages of the creditor at whose instance the declaration was made, if said creditor acted with fraud.

This claim shall be made in the same proceedings in which said judgment was rendered and shall be heard and determined according to the procedure prescribed for declaratory actions of greater import.

ART. 1168. Any legitimate debtor may object to the declaration of insolvency, whether voluntary or involuntary, and may request that the same be vacated on the ground that universal proceedings are improper or that a declaration of bankruptcy be made instead and that the procedure established by law for commercial bankruptcies be pursued.

ART. 1169. This objection must be made within three days following that of the citation of the opposing creditor, or within the period of time fixed in the edicts citing the creditors for the proceedings, if he has not been personally cited. After the expiration of these periods it shall not be admitted.

Said opposition shall be heard and determined in a separate record according to the procedure prescribed for incidental issues, which record shall be prepared in accordance with the provisions of articles 746 and 747 and without suspending the course of the principal proceedings.

Art. 1170. By virtue of the declaration of insolvency, all the outstanding debts of the debtor shall be considered due. If payment thereof is made before maturity, such debts shall be discounted according to the legal rate of interest.

SECTION III.—*Proceedings consequent upon a declaration of insolvency.*

ART. 1171. The following proceedings shall be ordered in the same decision in which the declaration of insolvency is made:

1. The attachment and deposit of all the property of the debtor, the seizure of his books and papers, and the detention of his correspondence.

2. The appointment of a depositary to take charge of the preservation and administration of the property of the debtor which has been seized.

3. The consolidation with the insolvency proceedings of the executions outstanding in the same or in any other courts, with the exception established in article 166.[1]

ART. 1172. The seizure and attachment of the property, books, and papers of the debtor shall be carried into effect by citing him to appear, if he has not absented himself, in the most adequate and least expensive manner according to the rules established for intervention in the estates of intestates.

The property excepted from attachment by article 1447 only shall be left in the possession of the insolvent.[2]

ART. 1173. The following rules shall be observed for the deposit of the property:

1. The cash and public securities shall be deposited in the public institution provided therefor, as well as the jewelry, if admitted by said institution.

A certified copy of the certificate of deposit shall be inserted in the record, and the original shall remain in the custody of the depositary to be delivered by him to the trustees.

2. Products and other personal poperty and live stock shall be delivered into the custody of the depositary according to the proper inventory.

3. The real estate shall be placed under the administration of the depositary, a cautionary notice of the attachment being made in the proper registries of property.

4. The proper inventory shall be made of the accounts and papers, with a statement of their condition, and they shall be preserved in the office of the clerk until they are delivered to the trustees, unless the judge should deem it proper to allow them to remain in the counting-room or office in which they may be, without fear of any abuses being committed.

In any case he shall adopt the measures which he may deem necessary to avoid the commission of any abuses.

ART. 1174. A communication shall be sent to the postmaster for the detention of the correspondence, requesting him that it be placed at the disposal of the court.

ART. 1175. Upon the day and at the hour which may be fixed for the purpose, the debtor shall open the correspondence in the presence of the judge and court clerk. The latter shall retain possession of

[1] A decision against the consolidation of an executory action with universal proceedings does not put an end to the latter nor does it make their continuation impossible.—*Decision of July 7, 1883.*

[2] The law of civil procedure in prescribing that the judge will issue the orders which may be necessary for the attachment and deposit of all the property of the debtor, included implicitly that of all the rights of the insolvent, among which are included the fruits of the property belonging to the conjugal community.—*Decision of March 26, 1878.*

that which may relate to the insolvency proceedings, delivering the balance to the debtor.

If the latter should not appear or should have absented himself without leaving a representative, the judge shall open the correspondence in the presence of the court clerk, entering a statement of this action in the record.

ART. 1176. If it shall appear from the correspondence that it is necessary to adopt an urgent measure for the security of the property, the judge shall order the same to be taken, informing the debtor of his action.

ART. 1177. The appointment of a depositary administrator of the estate of the insolvent must be given to a competent and responsible person, whether a creditor of the debtor or not.

He shall not be required to furnish a bond, if the judge relieves him therefrom, under his liability.

ART. 1178. After the office has been accepted, the oath administered, and the bond furnished, if the judge should have required one, the depositary-administrator shall be placed in possession thereof; a certified copy of his appointment visé by the judge shall be given him, and all persons he may designate shall be informed of said appointment in order that he may be recognized as such administrator.

ART. 1179. The depositary-administrator shall represent the estate of the insolvent until the trustees take possession of their office.

He shall, in addition, have the following powers and obligations:

1. To administer the property of the insolvent and preserve the same in his custody without impairment.

2. To collect the indebtedness existing in favor of the debtor.

3. To recommend to the judge the sale of any personal property which can not be preserved.

ART. 1180. For the collection of the indebtedness, he shall first obtain the consent of the court, which consent shall be entered, signed by the judge and by the court clerk, upon the titles of the said credits, should there be any, and otherwise it shall be proven by means of a certified copy of the order in which consent was granted.

In all the other matters referred to in the foregoing article the provisions prescribed for similar cases in the administration of intestate estates shall be observed.

ART. 1181. The money collected by the administrator of the estate of the insolvent shall be deposited without delay, subject to the orders of the court, in the public institution provided therefor.

The judge, nevertheless, may leave in the possession of said administrator the sum which he may consider indispensable to meet the expenses of said estate.

ART. 1182. The judge may make the depositary a daily allowance in proportion to the value and circumstances of the property entrusted

to his care, taking into consideration the fees that may be derived from the administration. In no case shall said allowance exceed 50 *reales* per day.

In all cases the depositary-administrator shall be entitled to collect:

1. One-half per cent on the collection of credits.

2. One per cent on the net proceeds from the sale of products, personal property, or live stock which may be alienated.

3. Five per cent on the net proceeds of the administration not arising from the sources mentioned in the foregoing paragraphs.

ART. 1183. The depositary shall cease in the discharge of his duties on the same day the trustees take possession of their office, to whom he shall turn over the administration and the property in his custody.

Within the next fifteen days he shall render an authenticated account, which shall be approved by the court after hearing the trustees thereon.

ART. 1184. The following rules shall be observed for the purpose of making the consolidation prescribed in rule 3 of article 1171:

1. If the executory record is on file in the same clerk's office where the insolvency proceedings are pending, the judge shall order the court clerk that he consolidate the same with the record of the universal proceedings, inserting therein a certified copy of the order, and citing the execution creditor to appear in the proceeding and assert his rights.

2. If the record should be on file in some other clerk's office of the same court, he shall order the court clerk to require his associates, by a certified copy of the order, to deliver to him the record for consolidation to the intestate proceedings, also citing the execution creditors for the purpose above mentioned.

3. In either case, if the execution creditor should object to the consolidation, he shall, within three days, request in the executory action a rehearing of the order relating thereto, and, after hearing the depositary-administrator of the estate of the insolvent thereupon within three days, for which purpose the record shall be delivered to him, the judge shall decide what he may deem proper, his decision being appealable for a stay of proceedings as well as a review.

4. If the execution be pending in other courts, the judge shall transmit to said court a certified copy of the ruling by which the declaration of insolvency was made and anything else which he may consider necessary, and he shall officially request that the record be forwarded to him for consolidation with the universal proceedings.

In such case the provisions prescribed in articles 175 et seq. shall be observed; and if the judge of whom the request is made should deny the request for consolidation, a separate record shall be made of the insolvency proceedings, which record shall include copies of what may be necessary for subsequent proceedings.

ART. 1185. The actions and causes mentioned in article 1002 may also be consolidated with these proceedings.

These consolidations shall be ordered in the ordinary manner, at the instance of the depositary-administrator or of the trustees in insolvency.

ART. 1186. As soon as the declaration of insolvency is final, if it should be necessary, the judge shall order that the insolvent present the statement of his creditors within three days, as well as the memorandum prescribed in numbers 2 and 3 of article 1155.

ART. 1187. The judge may increase this period for the length of time which he may consider indispensable when it is clearly insufficient in view of the importance and special circumstances of the insolvency proceedings.

ART. 1188. If the insolvent should not comply with the provisions of the foregoing article within the period which may be fixed therefor, or should not be able to comply therewith on account of his absence, the proceedings shall continue, and in the classification of said proceedings such failure shall be considered an indication of culpability.

ART. 1189. If the insolvent be an association or company not governed by the provisions of the Code of Commerce, if its director or manager does not comply with the provisions of article 1186, the judge may appoint an expert to make the general balance and render a report of the causes which may have occasioned the insolvency of said association or company, for which purpose the books and papers of the same shall be delivered to him. The judge shall fix the period which he may deem necessary for this purpose, which can not exceed thirty days.

ART. 1190. If the insolvent should absent himself from the place where the proceedings are pending without leaving a person sufficiently empowered to represent him in the insolvency proceedings, he shall be called by means of edicts in the manner prescribed in article 269, in order that within nine days he may enter an appearance in the proceedings through a solicitor, and if he should not do so he shall be declared in default, the provisions prescribed in article 281 being observed.

SECTION IV.—*Citation of creditors and appointment of trustees.*

ART. 1191. Without prejudice to continuing the execution of the proceedings prescribed in the foregoing section, as soon as the declaration of insolvency becomes final, the judge shall order it published by means of edicts, admonishing all persons not to make any payments to the insolvent, under penalty of their being considered illegal, and that all payments be made to the depositary, or to the trustees as soon as they are appointed.

ART. 1192. At the same time he shall order that the creditors be cited by the same edicts to appear in the proceedings and present

the evidence of their claims, and shall order a meeting called for the appointment of trustees upon the day, hour, and at the place which the judge himself may designate.

ART. 1193. The period between the call and the holding of the meeting can not be less than twenty nor more than forty days to be counted from the date of the publication of the edicts.

ART. 1194. The judge shall fix the day for the holding of the meeting, taking into consideration the number and residence of the creditors, so that all those who may be in the respective territory of each of the islands of Cuba and Porto Rico may have time to attend the meeting or to give a power of attorney to a person to represent them.

ART. 1195. The edicts referred to in articles 1191 et seq. shall be published and posted at the customary places where the proceedings are being held and at the domicile of the insolvent, and shall be inserted in the official bulletins of the provinces, where there are any, and in the *Gaceta* of the General Government, as well as in that of Madrid whenever the judge considers it advisable, in view of the importance and circumstances of the insolvency proceedings.

ART. 1196. Without prejudice to the calls by edicts, all the creditors whose domiciles may be known and who are included in the statement presented by the insolvent, shall be personally cited to appear, the letters mandatory and rogatory which may be necessary for the purpose being issued.

ART. 1197. The insolvent shall also be cited by writ for the first meeting and for the other meetings which may be held during the proceedings, in order that he may attend the same in person or through an empowered representative should he so desire.

ART. 1198. Appearance by the creditors with the proof of their claims shall be made personally before the court clerk or in writing, as the person interested may elect.

ART. 1199. If the appearance should be personal, the proper entry to that effect shall be made in the record, stating therein the name, surnames, status, profession, and domicile of the creditor, the designation of the house where he resides, the nature of the document, its date, and, in a proper case, the notary who may have authenticated it, and the net amount of the credit claimed, the creditor further stating whether he holds any pledge or other guaranty in his own possession or in that of another person. This statement shall be signed by the creditor, and if he should not be able to do so, by a witness at his request, and by the court clerk.

ART. 1200. If the appearance is made in writing, the statements aforementioned shall also be included therein, and it shall be drafted on the proper stamped paper and signed by the person interested, or by another person at his request if he were not able to do so.

If the appearance is made through a duly empowered representative,

the power of attorney shall be attached to the record with the proofs of the claims.

ART. 1201. The court clerk shall issue a receipt for the titles of credits which may be presented, even though not requested by the person interested, entering the same in the appearance itself, or in the memorandum of the presentation of the instrument.

ART. 1202. A separate record shall be made, with the evidence of the credits, the appearances, or the written statements of the presentation, to which said documents shall be added in the order in which they are presented, the creditors being numbered in the same order.

ART. 1203. In extraordinary cases in which, by reason of there being a very large number of creditors, or on account of the character of the credits, it may be reasonably presumed that it will not be possible to carry out the provisions contained in the foregoing articles within the period of forty days, fixed in article 1193 for holding the meeting, the judge may extend this period for the time he may consider necessary.

ART. 1204. Forty-eight hours before the time fixed for the meeting, the time for the appearance of creditors for the purpose of attending the same and for electing trustees shall be closed.

Those who may appear thereafter must do so in writing, and they shall be admitted for the subsequent effects of the proceedings.

ART. 1205. The court clerk shall, as the creditors appear with the evidence of their credits, prepare an individual statement of them which must be completed for use at the meeting.

ART. 1206. Said statement shall include the names and surnames of the creditors and the amounts claimed by each, with the ordinal number of their presentation and the folio of the record at which the respective documents may be found, and a statement as to whether said claim is included in the statement presented by the insolvent.

ART. 1207. The provisions of article 1135 shall be applicable to the meeting held for the appointment of trustees and to other meetings held during the course of the proceedings.

ART. 1208. Three trustees shall be appointed for these proceedings, which number can not be increased nor reduced.

An exception may be made, however, if all the creditors who attend the meeting unanimously agree to appoint one or two trustees.

ART. 1209. With the exception of the last-named case, the election of the three trustees shall be had at two ballots by call of names of the creditors present at the meeting, whatever be their number and the liabilities which they represent.

ART. 1210. The election of the first and second trustee shall be had at one ballot; the two receiving a plurality vote of the amount of the capital or liabilities represented, whatever be the number of creditors representing the same, shall be declared elected.

If more than two persons receive a vote representing an equal proportion of the liabilities, the one receiving the larger number of votes shall be given the preference, and if the number of votes should also be equal, then the selection shall be made by lot from among such persons.

ART. 1211. In the election of the third trustee the creditors whose claims were included in the majority vote of the first two trustees shall not take part. The second election shall be held by the creditors voting with the minority only, and the person obtaining the largest number of votes shall be elected trustee.

If there should be two or more receiving the same number of votes, the one receiving a vote representing the greater amount of the claims shall be the third trustee; and if the amount of the claims should also be equal, said third trustee shall be selected by lot from among those receiving such equality of votes and claims.

ART. 1212. If by reason of death or any other cause, it should become necessary to replace one of the trustees, the election of either of the first two shall be had by the relative majority of the claims, and of the third trustee by the relative majority of the votes of the creditors attending the meeting, in accordance with the provisions contained in the foregoing articles.

ART. 1213. Only male creditors can be elected trustees who are over twenty-five years of age, present at the meeting, who are such in their own right and not representing another person, who do not have any known or pretended preferred claim and who reside at the place where the proceedings are being held.

Only in the absence of creditors in their own right can the representatives of others be elected.

If there should be only creditors having known or pretended preferred claims, and representatives of common creditors, the election shall be made from among the latter.

ART. 1214. The meeting shall be held on the day and at the hour fixed therefor, under the chairmanship of the judge and with the attendance of the court clerk.

After a statement of the creditors attending has been made, and if it agrees with the one made by the court clerk in accordance with the provisions of article 1205, the judge shall declare the meeting open for business, whatever be the number of creditors present thereat.

The session shall begin with the reading of the provisions of this law relating to the appointment of trustees; then the court clerk shall inform the meeting of the facts upon which the declaration of insolvency was made, of the result of all measures taken for the custody of the property, books, and papers, and of any other matters which may have taken place.

After these formalities have been complied with, the election of

trustees shall be continued in the manner prescribed in articles 1208 et seq.

The proper minutes of the result of the meeting, with a detailed statement of the voting had by call of names, shall be drafted, and, in a proper case, of the protests which may have been made, which minutes, after being read and approved, shall be signed by the judge, the creditors present, the debtor, if he has attended, and the court clerk.

ART. 1215. After the trustees have been elected, they shall be given possession of their offices, after they have accepted the same and after they have taken an oath that they will perform said duties faithfully and well. Their appointment shall be communicated to whom it may be necessary.

Their appointment shall furthermore be published by edicts, which shall be posted in the customary places and inserted in the official newspapers in which the call for the meeting may have been published.

In these edicts it shall be required that all persons deliver to the trustees all property belonging to the insolvent.

ART. 1216. The following are the duties of the trustees:

1. To represent the estate of the insolvent in and out of court, and defend its rights, and exercise the actions, and plead such exceptions as may be proper.

2. To administer the property of the estate of the insolvent, taking charge thereof and of the books and papers.

3. To recover and collect all amounts, rents, and annuities belonging to the estate of the insolvent, and pay the expenses thereof which may be indispensable for the defense of the interests and the preservation and benefit of the property of said estate.

4. To procure the alienation and realization of all property, rights, and actions of the estate of the insolvent under the most advantageous conditions and with legal formalities.

5. To examine the documentary proof of credits and propose to the meeting of creditors their acknowledgment and classification.

6. To take the steps necessary to call and hold the meetings of creditors, in the cases and for the purposes which they may consider necessary, in addition to the meetings expressly prescribed in this law.[1]

ART. 1217. The trustees shall collectively be entitled to the following remuneration, which they shall divide among themselves in equal parts, should they not have made any agreement to the contrary:

One-half per cent of the cash value of all public securities sold.

Two per cent of the net amount received at the sale of jewelry, personal property, live stock, or crops which are not the products of their administration.

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[1] The trustees may institute the same actions which it was the privilege of the insolvent to bring against persons against whom he had claims (*Decision of December 14, 1861*), and they represent him as well as the creditors.—*Decisions of June 17. 1887, and September 30, 1886.*

One per cent of the net amount received from the sale of real property and of the amount collected from the credits or claims belonging to the estate.

Five per cent of the net products of the administration which are not derived from the sources mentioned in the foregoing paragraphs.

If in the performance of their duties traveling should become necessary, the costs thereof shall be allowed them by an order of the judge and a mandate which shall be issued for the purpose.

ART. 1218. The election of all or of any of the trustees may be impugned by the debtor or by any of the creditors appearing in the proceedings, who may not have attended the meeting, or who should have dissented from the majority and protested against the election at the time thereof.

In order that the protest may be admitted it must be presented within three days after the holding of the meeting, if the debtor or the creditor making the same should have been present thereat, and otherwise within a similar period, counted from the date of the publication of the appointment of the trustees.[1]

ART. 1219. The only causes for objections admissible shall be the following:

1. A legal impediment which prevents the persons elected from discharging the duties of the office.

2. A violation of the forms prescribed for calling and holding the meeting and the deliberations thereof.

3. A lack of personal or representative capacity in any of those who may have attended the meeting and voted with the majority, provided that by excluding their vote there would not have been a majority of votes or of claims represented.

ART. 1220. The objection shall be heard and determined in a separate record, to which the trustee objected to shall be a party, at the cost of the objecting party, and the record shall be composed of the written objection presented, a certified copy of the minutes of the meeting and other details which the judge may designate.

ART. 1221. After the separate record has been formed, it shall be delivered to the person who objected in order that he may, within the period of four days, formulate his objection, which shall be heard and determined in the manner prescribed for incidental issues.

The decision rendered thereupon may be appealed from for review and for a stay of proceedings.[2]

ART. 1222. The insolvency proceedings shall not be suspended by reason of the objection made to the election of trustees.

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[1] The absence of a protest does not affect the personal capacity of the debtor.—*Decision of December 8, 1885.*

[2] A decision upon this appeal is not definite for the purposes of an annulment of judgment.—*Decision of March 22, 1889.*

ART. 1185. The actions and causes mentioned in article 1002 may also be consolidated with these proceedings.

These consolidations shall be ordered in the ordinary manner, at the instance of the depositary-administrator or of the trustees in insolvency.

ART. 1186. As soon as the declaration of insolvency is final, if it should be necessary, the judge shall order that the insolvent present the statement of his creditors within three days, as well as the memorandum prescribed in numbers 2 and 3 of article 1155.

ART. 1187. The judge may increase this period for the length of time which he may consider indispensable when it is clearly insufficient in view of the importance and special circumstances of the insolvency proceedings.

ART. 1188. If the insolvent should not comply with the provisions of the foregoing article within the period which may be fixed therefor, or should not be able to comply therewith on account of his absence, the proceedings shall continue, and in the classification of said proceedings such failure shall be considered an indication of culpability.

ART. 1189. If the insolvent be an association or company not governed by the provisions of the Code of Commerce, if its director or manager does not comply with the provisions of article 1186, the judge may appoint an expert to make the general balance and render a report of the causes which may have occasioned the insolvency of said association or company, for which purpose the books and papers of the same shall be delivered to him. The judge shall fix the period which he may deem necessary for this purpose, which can not exceed thirty days.

ART. 1190. If the insolvent should absent himself from the place where the proceedings are pending without leaving a person sufficiently empowered to represent him in the insolvency proceedings, he shall be called by means of edicts in the manner prescribed in article 269, in order that within nine days he may enter an appearance in the proceedings through a solicitor, and if he should not do so he shall be declared in default, the provisions prescribed in article 281 being observed.

SECTION IV.—*Citation of creditors and appointment of trustees.*

ART. 1191. Without prejudice to continuing the execution of the proceedings prescribed in the foregoing section, as soon as the declaration of insolvency becomes final, the judge shall order it published by means of edicts, admonishing all persons not to make any payments to the insolvent, under penalty of their being considered illegal, and that all payments be made to the depositary, or to the trustees as soon as they are appointed.

ART. 1192. At the same time he shall order that the creditors be cited by the same edicts to appear in the proceedings and present

carefully administer and preserve the property of the estate of the insolvent, and to see that it gives the proper rents, products, or profits until sold.

For this purpose the provisions contained in articles 1015 to 1021, relating to the administration of intestate estates, shall be applicable to the administration of estates of insolvents without a hearing of the insolvent being necessary.[1]

ART. 1228. The judge shall leave in the hands of the trustees the sum which he may consider indispensable to meet the ordinary expenses of the estate of the insolvent, ordering that it be withdrawn from deposit, if necessary.

As such expenses shall be considered all those which are required for the custody and preservation of the property, the payment of taxes and charges to which the real property may be subject, and the costs of all actions and all ordinary matters pertaining to the estate.[2]

ART. 1229. The trustees shall present a statement or account of their administration on the last day of every month, unless the judge, taking into consideration the receipts of the estate, should deem it proper to extend this period.

If it should appear that there is money in the hands of the trustees which is not necessary for the ordinary expenses of the estate, and which has not been deposited by the trustees in the proper public establishment, the judge shall, under his liability, compel them to do so.

ART. 1230. A separate branch of the first record shall be formed out of the statements or accounts of the administration, which record, together with said separate branch and any others which may be formed, shall remain on file in the office of the clerk, subject to the examination of the creditors and debtor. No charges shall be made for said examination.

ART. 1231. The judge, on his own motion or at the instance of the creditors or of the insolvent, may correct any abuse which he may notice in the administration of the estate, taking the measures which he may consider necessary, including the suspension of the trustee or trustees who may have committed it.

In the latter case the judge, without allowing any remedy against his order, shall immediately call a meeting of the creditors in order that they may determine what they may consider most advisable.

If the decision of the meeting should confirm the suspension of the

[1] In order to preserve and administer the property of the insolvent, any lessee or renter of property, including the insolvent himself, is subject to eviction therefrom.—*Decision of October 30, 1885.*

[2] This shows exactly in what order the expenses and costs are to be paid, which was more fully sanctioned by article 592 of the law of 1855, which concords with article 1266 of the law in force.—*Decision of May 11, 1866.*

trustees shall be continued in the manner prescribed in articles 1208 et seq.

The proper minutes of the result of the meeting, with a detailed statement of the voting had by call of names, shall be drafted, and, in a proper case, of the protests which may have been made, which minutes, after being read and approved, shall be signed by the judge, the creditors present, the debtor, if he has attended, and the court clerk.

ART. 1215. After the trustees have been elected, they shall be given possession of their offices, after they have accepted the same and after they have taken an oath that they will perform said duties faithfully and well. Their appointment shall be communicated to whom it may be necessary.

Their appointment shall furthermore be published by edicts, which shall be posted in the customary places and inserted in the official newspapers in which the call for the meeting may have been published.

In these edicts it shall be required that all persons deliver to the trustees all property belonging to the insolvent.

ART. 1216. The following are the duties of the trustees:

1. To represent the estate of the insolvent in and out of court, and defend its rights, and exercise the actions, and plead such exceptions as may be proper.

2. To administer the property of the estate of the insolvent, taking charge thereof and of the books and papers.

3. To recover and collect all amounts, rents, and annuities belonging to the estate of the insolvent, and pay the expenses thereof which may be indispensable for the defense of the interests and the preservation and benefit of the property of said estate.

4. To procure the alienation and realization of all property, rights, and actions of the estate of the insolvent under the most advantageous conditions and with legal formalities.

5. To examine the documentary proof of credits and propose to the meeting of creditors their acknowledgment and classification.

6. To take the steps necessary to call and hold the meetings of creditors, in the cases and for the purposes which they may consider necessary, in addition to the meetings expressly prescribed in this law.[1]

ART. 1217. The trustees shall collectively be entitled to the following remuneration, which they shall divide among themselves in equal parts, should they not have made any agreement to the contrary:

One-half per cent of the cash value of all public securities sold.

Two per cent of the net amount received at the sale of jewelry, personal property, live stock, or crops which are not the products of their administration.

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[1] The trustees may institute the same actions which it was the privilege of the insolvent to bring against persons against whom he had claims (*Decision of December 14, 1861*), and they represent him as well as the creditors.—*Decisions of June 17, 1887, and September 30, 1886.*

One per cent of the net amount received from the sale of real property and of the amount collected from the credits or claims belonging to the estate.

Five per cent of the net products of the administration which are not derived from the sources mentioned in the foregoing paragraphs.

If in the performance of their duties traveling should become necessary, the costs thereof shall be allowed them by an order of the judge and a mandate which shall be issued for the purpose.

ART. 1218. The election of all or of any of the trustees may be impugned by the debtor or by any of the creditors appearing in the proceedings, who may not have attended the meeting, or who should have dissented from the majority and protested against the election at the time thereof.

In order that the protest may be admitted it must be presented within three days after the holding of the meeting, if the debtor or the creditor making the same should have been present thereat, and otherwise within a similar period, counted from the date of the publication of the appointment of the trustees.[1]

ART. 1219. The only causes for objections admissible shall be the following:

1. A legal impediment which prevents the persons elected from discharging the duties of the office.

2. A violation of the forms prescribed for calling and holding the meeting and the deliberations thereof.

3. A lack of personal or representative capacity in any of those who may have attended the meeting and voted with the majority, provided that by excluding their vote there would not have been a majority of votes or of claims represented.

ART. 1220. The objection shall be heard and determined in a separate record, to which the trustee objected to shall be a party, at the cost of the objecting party, and the record shall be composed of the written objection presented, a certified copy of the minutes of the meeting and other details which the judge may designate.

ART. 1221. After the separate record has been formed, it shall be delivered to the person who objected in order that he may, within the period of four days, formulate his objection, which shall be heard and determined in the manner prescribed for incidental issues.

The decision rendered thereupon may be appealed from for review and for a stay of proceedings.[2]

ART. 1222. The insolvency proceedings shall not be suspended by reason of the objection made to the election of trustees.

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[1] The absence of a protest does not affect the personal capacity of the debtor.—*Decision of December 5, 1885.*

[2] A decision upon this appeal is not definite for the purposes of an annulment of judgment.—*Decision of March 22, 1889.*

Neither shall said objection prevent the persons elected from entering upon the discharge of their duties, without prejudice to the result of the objection.

ART. 1223. Any trustee whose claim has not been acknowledged in whole or in part by the creditors' meeting, or by the judge, in a proper case, or who institutes any action against the estate of the insolvent, or should impugn any of the resolutions of the meetings of creditors, shall *de jure* be divested of his office and be replaced in the manner prescribed in article 1212.

ART. 1224. If for the reasons mentioned in the foregoing article or by reason of death or otherwise, it should be necessary to elect a successor to any of the trustees, such election shall take place at the first meeting which may be held, whether it be for the acknowledgement or the classification of the credits.

If the occurrence should take place after these meetings have been held, and no other meeting has been called, the judge shall order that a meeting be called for the purpose of electing a successor to the trustee in question.

In the meantime the trustee or trustees remaining in the discharge of their duties shall be the legal representatives of the estate of the insolvent.

ART. 1225. After the trustees have been placed in possession of their offices, the proceedings shall be divided into three separate records.

The first, which shall contain all proceedings already had, shall be called "Administration of the estate of the insolvent." The hearing and determination of all matters appertaining to said administration shall be had and entered therein, without prejudice to forming such separate branches which may be necessary for the purpose of avoiding confusion in the proceedings.

The second shall be for the acknowledgment and classification of the credits.

The third shall be for the classification of the insolvency proceedings.

SECTION V.—*First record.—Administration of the estate of the insolvent.*

ART. 1226. After the appointment of the trustees has been published, the property, effects, books, and papers of the insolvent shall be turned over to them by inventory.

The money shall remain on deposit at the disposal of the judge in the establishment provided therefor; the certificate or certificates of such deposit shall be delivered to the trustees, who shall give a receipt therefor, which shall be attached to this record.

ART. 1227. The trustees shall be bound, under their liability, to

carefully administer and preserve the property of the estate of the insolvent, and to see that it gives the proper rents, products, or profits until sold.

For this purpose the provisions contained in articles 1015 to 1021, relating to the administration of intestate estates, shall be applicable to the administration of estates of insolvents without a hearing of the insolvent being necessary.[1]

ART. 1228. The judge shall leave in the hands of the trustees the sum which he may consider indispensable to meet the ordinary expenses of the estate of the insolvent, ordering that it be withdrawn from deposit, if necessary.

As such expenses shall be considered all those which are required for the custody and preservation of the property, the payment of taxes and charges to which the real property may be subject, and the costs of all actions and all ordinary matters pertaining to the estate.[2]

ART. 1229. The trustees shall present a statement or account of their administration on the last day of every month, unless the judge, taking into consideration the receipts of the estate, should deem it proper to extend this period.

If it should appear that there is money in the hands of the trustees which is not necessary for the ordinary expenses of the estate, and which has not been deposited by the trustees in the proper public establishment, the judge shall, under his liability, compel them to do so.

ART. 1230. A separate branch of the first record shall be formed out of the statements or accounts of the administration, which record, together with said separate branch and any others which may be formed, shall remain on file in the office of the clerk, subject to the examination of the creditors and debtor. No charges shall be made for said examination.

ART. 1231. The judge, on his own motion or at the instance of the creditors or of the insolvent, may correct any abuse which he may notice in the administration of the estate, taking the measures which he may consider necessary, including the suspension of the trustee or trustees who may have committed it.

In the latter case the judge, without allowing any remedy against his order, shall immediately call a meeting of the creditors in order that they may determine what they may consider most advisable.

If the decision of the meeting should confirm the suspension of the

[1] In order to preserve and administer the property of the insolvent, any lessee or renter of property, including the insolvent himself, is subject to eviction therefrom.—*Decision of October 30, 1885.*

[2] This shows exactly in what order the expenses and costs are to be paid, which was more fully sanctioned by article 592 of the law of 1855, which concords with article 1266 of the law in force.—*Decision of May 11, 1866.*

Neither shall said objection prevent the persons elected from entering upon the discharge of their duties, without prejudice to the result of the objection.

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trustee, the election of his successor shall be proceeded with at the same meeting in the manner prescribed in article 1212.

Otherwise the suspension ordered by the judge shall be considered vacated.

The provisions contained in this article are understood without prejudice to the institution of criminal proceedings when proper.

ART. 1232. After the trustees have been given possession of the property and effects of the insolvent, they shall proceed with the sale of the same, in the first separate record, or in branches thereof, only excepting—

1. Property with regard to which there is an action pending as to its ownership, instituted by a third person, in which case the sale shall be delayed until a final judgment is rendered therein.

2. The real property, which, on account of being specially mortgaged, is seized under an execution, which has not been consolidated with the bankruptcy proceedings.

In such case a communication shall be sent to the judge taking cognizance of the executory action requesting that he place the surplus remaining, after payment of the mortgage creditor, at the disposal of the estate of the insolvent.

ART. 1233. When the trustees should believe that it is for the best interests of the estate of the insolvent to suspend or postpone the sale of some property, they shall so inform the judge, who shall agree to such suspension if he deems it proper, but a report of the causes or reasons for the suspension shall be presented at the first meeting of the creditors, in order that a majority of said creditors, fixed according to rule 6 of article 1137, may decide what they may consider most advisable.

ART. 1234. The sale shall take place with the formalities prescribed for the sale of each class of property by judicial compulsion in an executory action.

ART. 1235. The appraisement shall be made by an expert selected by the judge in the manner prescribed in article 615. Articles 616 et seq. shall also be applicable to this case.

Upon the recommendation of the trustees the judge may order that three experts be selected in the same manner when he believes that it is required in view of the value of the property.

The representatives of the trustees and of the insolvent shall be cited to appear at the day and hour fixed for selecting the experts by lot. If they appear and agree upon the appointment of one or more experts, those they designate shall be considered as appointed. Otherwise the election shall take place in accordance with the provisions of said article 615.

ART. 1236. Should no admissible bid be received, a second auction shall be announced, with a reduction of 25 per cent of the appraisement.

If there should be no bidder at the second sale, a meeting of the creditors shall be called in order that they may agree as to the manner in which the unsold property shall be distributed, unless they prefer a third auction thereof without subjecting said sale to a minimum bid.

In case they prefer the distribution, it shall be based upon two-thirds of the amount which served as a minimum bid at the second sale.

ART. 1237. Credits, securities, and shares of stock may also be sold at public auction when, being subjects of litigation, or their sale difficult, or when they will not mature for a long period of time, or when litigation becomes necessary to recover them, the time for the conclusion of the insolvency proceedings would be indefinitely prolonged.

In such cases, upon the recommendation of the trustees, the judge shall make such order as he may consider most advisable to determine the amount to be designated as the minimum bid at such sale.

ART. 1238. After the sale at auction has been approved, the trustees shall execute the proper instrument in favor of the buyer, as soon as he has paid the amount of the bid, which sum shall be placed on deposit at the disposal of the court in the manner hereinbefore prescribed.

ART. 1239. The trustees may compromise causes pending or which may be instituted by or against the estate of the insolvent, and any other questions which may be subject to litigation in which said estate may be interested, provided that they are authorized to compromise by the meeting of creditors.

Should they not be so authorized, they shall submit the agreement for compromise to the first meeting thereafter held or which may be called for the purpose, which shall decide according to a majority computed as preseribed by rule 6 of article 1137.

In either case the trustees shall submit the compromise to the court for approval in a separate record, without which requisite it shall not be valid. The judge shall hear the insolvent during a period of six days, and shall decide what he may deem proper without further proceedings.

The ruling approving or disapproving the compromise may be appealed from for a review and for a stay of proceedings.

ART. 1240. After all the credits have been paid, or such part thereof which the property of the estate is sufficient to meet, the trustees shall render a general authenticated account, which shall be attached to the separate branch of the record of accounts, and it shall remain in the office of the clerk for a period of fifteen days subject to the examination of the debtor and of such creditors who may not have been fully paid.

ART. 1241. If fifteen days should elapse without any objection being made, the judge shall approve the account and shall order that the trustees be given the proper release.

ART. 1242. All objections made to the account shall be heard and determined with the trustees in the ordinary action which may be proper according to the amount involved.

The person instituting such action shall litigate at his own expense and under his exclusive liability, without prejudice to an adjudication upon costs which may be imposed upon the trustees, if the action should be decided against them.

Persons making common cause shall litigate jointly and be represented by the same counsel.

ART. 1243. If the trustees cease in the discharge of their duties before the conclusion of the insolvency proceedings, they shall in the same manner render their general account within a period of fifteen days, which shall be submitted for the examination and approval of the first meeting of creditors which may be held, after a report thereon by the new trustees.

If no meeting is held, the approval of said accounts shall appertain to the judge with a hearing of the new trustees; and if there should be any objection thereto, it shall be heard and determined according to the proceedings established for incidental issues, and the creditors requesting the same may be parties thereto.

The ruling or decision rendered in these issues may be appealed from for a review and for a stay of proceedings.

ART. 1244. After the account of the trustees has been approved, delivery shall be made to the debtor of his books and papers, and of the property remaining, if all the credits and the costs incurred in the insolvency proceedings have been paid.

Otherwise, the books and papers shall be kept in the office of the clerk, for subsequent purposes, attached to the record.

ART. 1245. Notice of the definite result of the insolvency proceedings shall be personally given by writ (*cédula*) to such creditors as have a known domicile and who have not recovered their full credits, and in any case it shall be published by means of edicts which shall be inserted in the newspapers in which the declaration of insolvency may have been published.

ART. 1246. The ruling which orders the publication of the definite result of the insolvency proceedings shall also declare the discharge of the insolvent, without the necessity of his application therefor nor a hearing of the trustees.

This discharge shall be understood without prejudice to the rights of the creditors whose credits have not been paid in full, and to what may have been decided with regard to the culpability of the insolvent.

SECTION VI.—*Second separate record; acknowledgment, classification, and payment of credits.*

ART. 1247. After the trustees have taken possession of the property, books, and papers of the insolvent, the second separate record shall be formed for the acknowledgment, classification, and payment of the credits.

This record shall be formed with a certified literal copy of the statement or report of the debts presented by the debtor and of the separate record which may have been formed in accordance with the provisions of article 1202 with the written evidence of the credits presented by the creditors.

§ 1. *Acknowledgment of credits.*

ART. 1248. After the second separate record has been formed, it shall be delivered to the trustees in order that, within the period which the judge may fix, in view of the circumstances of the insolvency proceedings, but not to exceed thirty days, and after examining the written evidence presented and the books and papers of the debtor, they may make an examination and liquidation of the credits, rendering their report upon the investigation of each.

ART. 1249. From the result of said examination and for the purpose of rendering an account at the meeting of creditors, the trustees shall make three statements which shall contain, respectively—

1. All the credits claimed in the order in which they may have been presented.

2. Those which, in their opinion, should be acknowledged.

3. Those which should not be acknowledged.

All credits which may have been claimed to the date of the statements shall be included therein.

ART. 1250. The judge shall, *ex officio*, and if it should be necessary, compel the trustees, by imposing fines or other punishments, to make the examination of the credits and present the statements within the period he may have fixed.

ART. 1251. As soon as the trustees present the aforementioned statements, the judge shall order a meeting of the creditors to be called for the acknowledgment of the credits, fixing the day, hour, and place where it is to be held.

For this meeting shall be cited, either in person or through their representatives, by a writ which shall be left in their respective domiciles, the creditors who have, or who have stated they have, a domicile at the place where the proceedings are being held. The others shall be cited by edicts in the manner prescribed in article 1195.

ART. 1252. A period of from fifteen to thirty days must elapse between the call for and the holding of the meeting, during which

period the creditors and the debtor may examine the report of the trustees and the written evidence of the credits, for which purpose they shall be kept in the clerk's office.

ART. 1253. After the meeting, presided over by the judge, assisted by the clerk, has been called to order, the articles of this law relating to the acknowledgment of credits shall be read, as well as those which refer to the manner of objecting to the resolutions adopted thereon, and each entry of the statements referred to in article 1249 shall be discussed separately.

A separate vote must be taken upon each of the entries, the credits being rejected or acknowledged by unanimity, or otherwise by a majority vote, which is to be computed in the manner prescribed in rule 6 of article 1137.

The minutes of this meeting, which shall include, in a proper case, the protests of those who may have dissented from the majority, shall be signed by all the creditors present, and by the debtor or his representative, if present, and by the judge and court clerk.[1]

ART. 1254. No credit which has been the subject of an order of sale made by a final judgment rendered in an executory action consolidated with the insolvency proceedings, can be discussed at said meeting.

Such credits shall be considered as acknowledged, but without changing the character thereof for the purposes of their classification, and without prejudice to the right of the trustees to impugn the same in the declaratory action which may be proper according to the amount involved.

ART. 1255. If there should not be a majority of votes and amounts, the judge, upon the conclusion of the meeting, shall have the record brought before him and, without further proceedings, shall determine what he may consider legal with regard to the credit disputed.

The same shall take place with regard to all credits, when it has been impossible to hold a meeting on account of the nonattendance of a number of creditors sufficient to adopt resolutions, in accordance with the provisions of article 1136.

ART. 1256. The meeting, or the judge, in a proper case, may order that the acknowledgment of any claim which has not been sufficiently proven be left pending.

In such case the person interested may complete his proof in a separate branch of the record at any time before the holding of the meeting for the classification of the credits.

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[1] If at the meeting for the acknowledgment of credits some credit of the Treasury is excluded, without the representative of the State being present, notwithstanding his citation at the proper time, the Treasury has the benefit of restitution *in integrum* against said resolution in the same manner as is granted by law for the minors who suffer a prejudice, loss, or damage through the fault of their guardian.—*Decision of December 13, 1862.*

ART. 1257. A document shall be given to the acknowledged creditors drafted on ordinary paper, signed by the trustees and countersigned by the judge, in which shall be stated the amount, origin, and acknowledgment of the credit.

ART. 1258. The trustees shall communicate the decision of the meeting or of the judge to the creditors whose credits have not been acknowledged by means of a circular letter, which shall be delivered by the court clerk to those who have their domicile or a legal representative at the place where the proceedings are being held, in the manner prescribed for notifications, being transmitted by mail to the others.

The proper entry of the service shall be made in this separate record and a copy of the circular letter shall also be attached thereto.

Furthermore, the court clerk shall return to said creditors the written evidence of their credits without requiring a new order, when they request the same.

ART. 1259. The resolutions adopted at these meetings and the decisions of the judge rendered in cases where there are not the two majorities, may be impugned within eight days by the creditors who did not attend the meeting or by those who may have dissented from or protested at once against the vote of the majority.

Such period shall commence, for the latter, from the day following the holding of the meeting, and for the others, from the day following that on which the circular letter may have been delivered or transmitted to them.

ART. 1260. If the eight days should elapse without any objection having been made, the resolutions of the meeting or the decisions of the judge, in a proper case, shall become final, and no objection against the same shall be admitted.

ART. 1261. A separate branch of the record shall be formed of each of the objections which may be made, which shall be heard and determined according to the procedure prescribed for incidental issues, the trustees and the person interested in the credit objected to, in a proper case, being parties thereto. The decision rendered hereon may be appealed from for review and for a stay of proceedings.

ART. 1262. The trustees are obliged to sustain the resolutions of the majority, even though their own vote may have been against the same, but they are not obliged to sustain the ruling of the judge.

The debtor may be a party to the separate branches which may be formed. If he agrees to the resolutions adopted, he shall litigate jointly with the trustees; if he objects thereto, then jointly with the objecting creditor, and in either case he shall be represented by the same counsel.

ART. 1263. The annulment of the resolutions of the meeting may

also be requested when the formalities prescribed for the call, holding of, and voting at the meeting have not been observed.

Such request may be made only by the debtor or by the creditors, who, having in due time presented the written evidence of their credits, may not have attended the meeeting, or who having attended should have protested against the validity of the resolution, abstaining from voting thereupon. This request must be made within three days after the holding of the meeting, after which it shall not be admitted.

It shall be heard and determined according to the provisions of article 1221, but without forming a separate branch of the record and suspending the course of the principal proceedings.

§ 2. *Classification of credits.*

ART. 1264. As soon as the decision rendered in the incidental issue referred to in the foregoing article becomes final, if the request for annulment should be denied, or if the eight days granted by article 1259 in which to object to the resolutions of the meeting or to the decision of the judge should elapse, another meeting of the creditors whose claims may have been acknowledged, shall be called for the purpose of classifying their credits, without prejudice to the continuation of the separate branches of the record which may have been formed in accordance with the provisions of article 1261.

The citation for this meeting shall be made in accordance with the provisions of article 1251.

ART. 1265. From fifteen to thirty days must elapse between the call and the holding of this meeting.

If, in an extraordinary case, the judge should consider said period insufficient to allow the trustees to make the statements referred to in the following article, he may extend said period for the time he may consider absolutely indispensable.

ART. 1266. [1] Within the intervening time the trustees shall prepare, for presentation at the meeting, four statements, which shall include:

The first, creditors whose claims are for personal services and maintenance.

If an insolvent or testate succession is in question, this place shall be filled by the creditors whose claims are for the funeral expenses proportionate to the means of the deceased, and for the execution of his last will and making of the inventory, and the judicial proceedings which may have been occasioned by the intestate or testamentary proceedings.

The second, the mortgage creditors, in the order of preference established by law.

[1] See articles 1921 to 1929 of the civil code with regard to the classification and preference of credits.

In this statement shall be included not only the creditors who have an existing legal mortgage in their favor, but also those who have a voluntary mortgage, it being noted that the preference of the latter is limited to the property specially mortgaged; and if the value of said property should not be sufficient to cover the total amount of the credit secured by the mortgage, they shall be considered, with regard to the difference, as creditors whose credits appear in a public instrument (*acreedores escriturarios*).

Creditors secured by a pledge shall also be included in this statement, their preference being also limited to the cash value of said pledge, which shall be turned into the funds of the estate of the insolvent.

The third, the creditors whose credits appear in a public instrument, by order of dates.

The fourth, the ordinary creditors, including in this last statement all the credits not included in the three preceding ones.[1]

ART. 1267. The trustees shall make a separate memorandum of the property of any kind whatsoever which the insolvent might have in his possession belonging to third persons, stating the names of the owners thereof.

If the latter should have claimed said property, the same shall be delivered to them with the consent of the trustees and of the insolvent. If either should not consent thereto, the matter shall be heard and determined in a separate branch according to the procedure prescribed for the declaratory action which may be proper according to the amount involved.

ART. 1268. Before the day fixed for the meeting, the trustees must have rendered their reports in the separate branches upon the credits, the acknowledgment of which may have remained pending, or which may have been claimed after the statements referred to in article 1249 have been made.

If the trustees are of the opinion that said credits should be acknowledged, they shall be included in the statements of the classification, without prejudice to what the meeting may decide as to their acknowledgment.

ART. 1269. After the meeting has been called to order in the manner prescribed for previous meetings, the session shall begin with the reading of the articles of this law relating to the classification of credits and to objections to resolutions upon this point.

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[1] Neither the fees of attorneys nor those of solicitors shall be considered as expenses for maintenance.—*Decisions of May 5, 1873, and March 5, 1874.*

The mortgage creditors who have not taken part in voting upon the agreement are entitled to recover interest due before or after the debtor is declared insolvent, because his contracts continue without novation of any kind whatsoever.—*Decision of March 17, 1876.*

Creditors for personal services are such notwithstanding the amount of the salary which they receive.—*Decision of January 13, 1887.*

Thereupon the credits, the acknowledgment of which may be pending, shall be discussed, and the report of the trustees referred to in the foregoing article shall be voted upon. The owners of the credits which have been acknowledged may take part in the deliberations of the meeting for the classification of the credits.

The statements of the classification shall then be taken up, and the credits included therein shall be discussed.

Upon the termination of the discussion, the report of the trustees upon each claim shall be voted upon and, if there should not be unanimity, the decision of the majority of votes and amounts combined in the manner prescribed in rule 6 of article 1137 shall be approved.

Upon the termination of the meeting a minute of all its proceedings shall be made and signed by all those present, and by the judge and the court clerk.[1]

ART. 1270. If the two majorities should not be received, the judge shall order that the record be brought before him and shall decide what he may consider in accordance with law, upon the credit or credits which have caused the dissension.

ART. 1271. The provisions of the foregoing article shall also be observed when it may not have been possible to hold the meeting on account of the nonattendance of the number of creditors necessary, according to article 1136, to adopt resolutions.

In such case the judge shall render the decision which he may consider just upon each of the separate branches made of the credits, the acknowledgment of which is pending, should there be any; and in the second branch he shall, without delay, render a decision classifying the credits in which he shall approve the statements formed by the trustees, or shall make therein the corrections which may be proper according to law.

ART. 1272. In the case of article 1270 the resolution of the judge shall be communicated to the trustees and to the persons interested in the credits which have caused the disagreement.

In the case of article 1271 the decision classifying the credits shall be communicated to the trustees and to the acknowledged creditors or to their representatives who have their domicile, or have designated one, at the place where the proceedings are pending.

If there should be acknowledged creditors who are absent without having any legal representative at said place, notice of said decision shall be served upon them by means of an edict, which shall be posted at the customary public places.

ART. 1273. Within the eight days following the meeting for the classification of the credits, the resolutions thereof may be objected to by the acknowledged creditors who did not attend the same, or who,

[1] In insolvency proceedings a decision upon the legality and classification of credits is final.—*Decision of April 15, 1856.*

having attended, should have dissented from the vote of the majority and reserved their right to object thereto.

The resolution of the judge may also be objected to within the eight days following the service of notice thereof.

After the expiration of these periods no objections shall be admitted.

ART. 1274. All objections which may be made to the resolutions of the meeting or to the decision of the judge with regard to the classification of credits, whether made by one or more creditors, shall be heard and determined at the same time in the second separate branch according to the procedure prescribed for incidental issues.

The trustees shall always be parties in these questions, and must, in a proper case, sustain the resolution of the meeting.

The creditors whose credits may have been objected to shall also be admitted as legal parties, as well as the other creditors who may desire to assist in sustaining or impugning the resolutions.

All those making common cause must litigate jointly and be represented by the same counsel.

The insolvent shall not be admitted as a party in these issues.

ART. 1275. For the purpose of prepaing the objection, the record, together with all other data relating to the acknowledgment and classification of credits, shall be delivered for a period of six days to the person or persons making the objection, and the same shall be done for the answer.

When, by reason of the large number of credits, the classification of which has been objected to, the judge should consider it necessary, he may extend to twelve days the period for the delivery, and shall have eight days in which to render a decision, the procedure prescribed for incidental issues being observed in the subsequent proceedings.

This decision may be appealed from for review and for a stay of proceedings.

§ 3. *Delay and its effects.*

ART. 1276. Creditors who reside either in the island of Cuba or Porto Rico, when they are to make use of their rights in the other, who shall not have appeared in the proceedings before the call for the meeting for the acknowledgment of the credits, and who enter their appearance thereafter, shall be considered negligent.

ART. 1277. The legal effects of such negligence shall be—

1. That the negligent person defray the costs of the acknowledgment of his credit.

2. Loss of any preference he may be entitled to, being reduced to the class of a common creditor, if he appears after the meeting for the classification of credits.

3. Loss of the aliquot part he may have been entitled to of all dividends declared before his appearance, not having any right to par-

ticipate in any other dividends but in those which may be declared thereafter.

ART. 1278. If, between the time of the appearance and the acknowledgment some dividend should be declared, the negligent person shall participate therein, but the amount due him shall be kept in deposit.

These amounts shall be delivered to him when his credit is acknowledged. Should it not be acknowledged, they shall be returned to the common funds of the estate of the insolvent.

ART. 1279. For the acknowledgment of the credits of the negligent creditors a separate branch shall be formed with the petition and documents presented by each, and shall include an authenticated statement of the court clerk, showing whether or not said credit is included in the statement of debts presented by the debtor.

If it should be included in said statement, the proceedings shall be transmitted to the trustees in order that they may make a report as to the acknowledgment of the credit.

If it should not be included therein, the insolvent shall be heard for three days before the record of proceedings is transmitted to the trustees.

ART. 1280. If the negligent creditor should have appeared before the meeting for the classification is held, his claim shall be reported to the meeting in order that a decision may be arrived at as to its acknowledgment, should he have done so at a period sufficiently in advance to allow the proceedings prescribed in the foregoing article to be fulfilled.

Otherwise, the judge shall decide as to the acknowledgment, if the trustees agree.

Should the trustees not give their consent, the person interested shall reserve his right to litigate such matter with the trustees in the declaratory action which may be proper in view of the amount involved, but in all cases the costs of the prior proceedings shall be imposed upon him.

ART. 1281. Creditors residing in either of the islands of Cuba and Porto Rico, when they are to exercise their right in the other, whatever be the form in which they have been called, shall not be considered negligent until after the meeting for the classification has been held; the provisions of articles 1277 and 1278 shall apply to those who appear thereafter.

ART. 1282. Creditors residing in the Peninsula, in the Spanish possessions of Africa, in the Balearic Islands, and in the Canaries, or in any other countries, shall not incur any penalty, even after the meeting for the classification has been held.

If they should appear thereafter, a separate branch shall be formed, wherein their claims must be acknowledged if legitimate, and classified by a ruling therein rendered, hearing the trustees and the insolvent.

They shall preserve the preference which may correspond to their credits, and they shall be put in the place which may be assigned them; but in no case can the other creditors be obliged to return what they may have already received.

If their credits should be classified as common, they shall be equalized with all those of the same class; and after this has been done, they shall be entitled to a *pro rata* share of the funds of the estate still to be distributed.

ART. 1283. Negligent or tardy creditors shall not be heard in these proceedings, if they should appear after the distribution of all the property of the estate has been made.

§ 4. *Payment of credits.*

ART. 1284. After the eight days fixed in article 1273 have elapsed, without the decision of the meeting, or the resolution of the judge, in a proper case, relating to the classification having been impugned, the payment of the credits shall be proceeded with in the order established therein, until the funds of the estate which may be disposed of have been exhausted.

ART. 1285. When the objection made is directed towards the annulment of the resolutions of the meeting, or includes the entire classification, payments shall be suspended until a final decision is rendered thereupon.

If it is directed only against the classification of some credits, payments shall be proceeded with, a separate branch of the record being formed with certified copies of the statements and resolutions of the meeting, or of the judge, upon the classification of the credits.

ART. 1286. In the case of the second paragraph of the foregoing article, the amounts corresponding to the credits objected to shall be kept on deposit until a final decision is rendered on the objection, in order that they may be properly applied.

The same shall be done with those appertaining to the credits, the acknowledgment of which may have been objected to, if no final decision should as yet have been rendered on this issue.

ART. 1287. The amounts pertaining to the creditors whose credits having been acknowledged and classified by the meeting shall be paid to them, notwithstanding the same may have been objected to by an individual creditor, if they should furnish sufficient security to the satisfaction and under the liability of the trustees, to answer for the amounts they may receive.

ART. 1288. After the payment of the credits included in the first three classification statements has been made in the proper order, the balance of the funds shall be distributed *pro rata* among the common creditors, in the form of dividends, which shall be declared as the property is sold and sufficient funds are collected to cover at least five per cent of the pending credits.

If, in such case, the trustees should delay to recommend to the court the payment of a dividend, any of the creditors interested may request it.

ART. 1289. In order to make the payment, the court shall issue the proper warrant against the trustees in favor of each of the creditors who is to be paid in full, and the court shall order at the same time that they be furnished the necessary funds, which shall be withdrawn from deposit.

Upon delivery of the warrant to the creditor, the written acknowledgement of his credit shall be taken up, upon which document a memorandum of its cancellation shall be made, which shall be signed by the person interested and by the court clerk, and the latter shall attach said document to the separate branch of the record which contains the evidence of the credit, a note thereof being made on the second branch of the record.

The trustees, or the one commissioned therefor by his associates, shall pay the warrant, a receipt being entered thereon by the person interested, which shall be retained by the trustee as a voucher to be used in the settlement of his accounts.

ART. 1290. If payment is made in the form of dividends to the common creditors, the payment shall be made by the trustees at whose disposal the necessary funds shall be placed.

The trustees, or the one commissioned therefor, shall deliver to each creditor, or to his legal representative, the amount to which he may be entitled in the distribution, making a note thereof upon the written acknowledgment of the credit, without the presentation of which payment shall not be made, and the person interested shall, in addition, give a separate receipt to the trustees.

ART. 1291. After payment has been made, the trustees shall present to the court an account, vouched for with the receipts of the creditors, of the application made of the funds received for the purpose, replacing on deposit the balance on hand, should there be any, together with the amounts pertaining to the creditors who have not called therefor.

This account shall be attached to the record of accounts, and the court clerk shall deliver to the trustees the proper receipts containing the statements which may be proper for their security.

ART. 1292. After all the common creditors have been paid in full, the written acknowledgement of their credits shall be taken up and cancelled when payment of the last dividend is made.

In such case, or when all the funds of the estate have been exhausted, the proceedings shall be considered as terminated and the provisions contained in articles 1240 *et seq.* shall be observed.

SECTION VII.—*Third separate record—Classification of insolvency proceedings.*

ART. 1293. After the trustees have been appointed, the first separate record of the proceedings shall be delivered to them in order that, within thirty days, and after examining the books and papers of the debtor, they may state in a written argument the opinion which they may have formed with regard to the insolvency and the causes therefor, formulating the conclusions or advancing the theories which they may consider proper.[1]

ART. 1294. The third separate record shall be formed with true copies of the report, statement, and memorandum presented by the debtor, and the original statement of the trustees and the documents accompanying the same. After the first separate record has been attached hereto temporarily, all the papers shall be delivered to the deputy public prosecutor in order that he may render his report thereon.

ART. 1295. If the report of the deputy public prosecutor should agree with the opinion of the trustees, and both are favorable to the debtor, the judge shall order the record brought before him, and may declare the innocence of the insolvent if he deems it proper.

ART. 1296. When the report of the trustees and of the deputy public prosecutor, or of either of them, should be unfavorable to the insolvent, or if the judge believes that he should not defer to said opinions, even if favorable, he shall order that the record be referred for a period of six days to the insolvent, in order that he may allege what he may deem proper.

This issue shall be heard and determined according to the procedure prescribed for incidental issues arising in ordinary actions, and the decision rendered thereon may be appealed from for review and for a stay of proceedings.

ART. 1297. All creditors shall have a right to appear in this proceeding and prosecute the insolvent.

If one or more of said creditors should do so, and their objects are the same as those of the trustees, they shall litigate jointly and be represented by the same counsel.

If their purposes were different, they shall litigate separately.

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[1] Article 24 of the mortgage law is not violated by a decision which orders the payment of the costs incurred by trustees during insolvency proceedings before the payment of a mortgage credit, because such expenses and costs constitute a debt which must be paid from the property of the estate of the insolvent during the course of the proceedings, and upon the conclusion thereof when the accounts are settled. This payment can not be classified as a preferred payment among the creditors, but as an obligation contracted by the said creditors when they appoint the trustees and deposit their confidence in them.—*Decision of June 11, 1872.*

ART. 1298. If the culpability of the insolvent is declared by a final judgment, which declaration shall be understood for civil purposes only, the judge shall order that criminal proceedings be instituted against him in the third separate record. The procedure thereafter shall be that prescribed for criminal actions.

ART. 1299. When a company, association, or corporation is declared insolvent the trustees shall state, in the report prescribed by article 1293, the opinion they may have formed as to the criminal or civil liability which the managers, directors, or counsel of the insolvent company may have incurred by reason of their participation in acts, negotiations, or agreements contrary to their by-laws or to law.

ART. 1300. In the cases mentioned in the foregoing article, after the third separate record has been formed in the manner prescribed in article 1294, and heard and determined in the manner established in said article and in the following ones, a declaration shall be made as to whether there are or are not grounds sufficient to enforce liability against all or any of the persons who may have taken part in the management of the company.

If the liability to be enforced is criminal, the provisions prescribed in article 1298 shall be observed, and if civil, the trustees may institute the proper action.

SECTION VIII.—*Settlements between creditors and the insolvent.*

ART. 1301. At any stage of the insolvency proceedings, after the examination and acknowledgment of the credits, and not before, the creditors and the insolvent may make such settlements as they may consider proper.[1]

ART. 1302. Every petition made by the debtor or by any of the creditors that a meeting be called for the purpose of making a settlement shall contain the following requisites, without which it shall not be admitted:

1. That the terms of the settlement be clearly and precisely stated.

2. That there be as many printed or written copies thereof attached as there are acknowledged creditors.

3. That the person asking for a settlement binds himself to defray the expenses incurred in calling and holding the meeting, even though he defends as a poor person, securing the payment to the satisfaction of the judge.

ART. 1303. If the trustees or the deputy public prosecutor (*promotor fiscal*) or any creditor shall have in the third separate record requested that the insolvency be declared fraudulent, the debtor can not make any settlement with his creditors until a final judgment is rendered against said classification.

[1] The provisions of this article are to be understood with the limitation prescribed by article 1303.

ART. 1304. The provisions of the foregoing article shall not be applicable to companies or associations which have been declared insolvent, if their administrators or managers should be liable therefor.

The guilt which the latter may have incurred shall not deprive the companies of the benefit of a settlement with their creditors; but proposals for a settlement can not be made by the guilty administrator, nor can said companies be represented by him.

ART. 1305. If proposals for settlements should be presented when a meeting for the classification of the credits, or any subsequent meeting is to be, or has been called, said proposals shall be considered before any other matter at said meeting without the necessity of a special call.

If the proposals should be made before the meeting for the acknowledgment of credits, they shall also be considered at the same meeting, but after said acknowledgment, and only creditors whose credits have been acknowledged shall be allowed to take part in the discussion upon the settlement.

In either case the proposals must be presented a period sufficiently in advance to permit the copies to be delivered to the creditors twenty-four hours before the time fixed for the holding of the meeting.

ART. 1306. With the exception of the cases mentioned in the foregoing article and in article 1303, after the petition has been presented with the requisites prescribed in article 1302, the judge shall grant the same and shall order that a meeting of the creditors be called for the purpose of considering the settlement, fixing the day, hour, and place for the holding thereof.

ART. 1307. At least fifteen days must elapse between the call for the meeting and the time it is held. The judge may extend this period to thirty days if the circumstances of the insolvency proceedings so require.

ART. 1308. The creditors whose credits have been acknowledged by the meeting or by the judge, and those whose claims are pending acknowledgment, or their representatives, if they have any, shall be cited personally for this meeting by means of a writ, there being delivered to each at the time of the citation one of the copies presented in accordance with the provisions of number 2 of article 1302.

Absentees, should there be any, whose domicile is unknown, shall be cited by edicts in the manner prescribed in article 1195.

The purpose of the meeting shall be stated in the writs, as well as the day, hour, and place at which it is to be held.

ART. 1309. The call for the meeting to consider the settlement shall cause a suspension of the second separate record of the insolvency proceedings, and also that of the first in so far as it relates to the sale of the property, until after the settlements proposed have been discussed and a resolution adopted thereon.

ART. 1310. The provisions of articles 1135 to 1152, relating to composition and respite, shall also be applicable to settlements proposed after the declaration of insolvency, with the following modifications:

1. After the meeting has been called to order, the provisions of this law relating to settlements between a debtor and his creditors shall be read, after which the facts relating to the insolvency and to its actual condition shall be considered, including that of the third separate record, and after the proposals for settlement have been read a discussion shall be had thereupon.

2. In the case referred to in article 1141, if the proposals for settlement should not be adopted, the insolvency proceedings shall be continued, and the same shall be done if, in case of an objection, the nullity or inefficiency of the settlements is declared.

3. The trustees will be obliged to sustain the decision of the meeting, for which purpose they, together with the parties referred to in article 1148, shall be parties to the proceedings brought against the same.

4. The decision rendered in such proceedings may be appealed from for review and for a stay of proceedings, when the nullity or inefficiency of the settlement is declared. Otherwise the appeal shall be allowed for review only, and the settlement made between the debtor and the creditors who accept the same shall be carried out, without prejudice to what may be decided by final judgment.

ART. 1311. As soon as the decision of the meeting approving the settlement becomes final, the trustees shall communicate it by circular to the creditors acknowledged and to those, the acknowledgment of whose credits is pending, who may not have attended the meeting. Said decision shall also be published by edicts in the same newspapers in which the declaration of insolvency was inserted, a copy thereof being attached to the record.

Thereafter the proceedings shall be considered closed, and such orders shall be made therein as may be proper for the fulfillment of the settlement, which shall be binding on all creditors other than those excepted.[1]

SECTION IX.—*Maintenance of the insolvent.*

ART. 1312. If the insolvent should demand an allowance for maintenance, the judge shall fix the amount which he may consider necessary in view of the circumstances, but only in case that, in his judgment, the assets are in excess of the liabilities.

The ruling granting or denying the request shall be temporary and cannot be appealed from.[2]

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[1] See article 1919 of the Civil Code.

[2] The provisions of articles 1312 and 1317 of this law are not applicable, because the Code of Commerce contains provisions hereon.—*Decision of May 14, 1889.*

ART. 1313. The allowance temporarily made by the judge shall be considered at the first meeting of creditors which may be held, and said meeting may approve, modify, or discontinue said allowance, taking into consideration the necessities and circumstances of the insolvent, but it shall not refuse to grant the same when it does not clearly appear that the assets are insufficient to pay the indebtedness.

ART. 1314. The decision of the meeting granting or refusing to grant maintenance may be objected to by the debtor or by the creditors who may not have attended the same, and by those who may have dissented from and protested against the majority vote, if they institute proceedings within eight days after the resolution was adopted.

The objection shall be heard and determined in accordance with the provisions prescribed for incidental issues, those making common cause litigating jointly and represented by the same counsel, and the period for the admission of evidence may be extended to thirty days, if the period granted by article 752 should not be sufficient.

ART. 1315. During the pendency of the proceedings for maintenance the debtor shall receive the allowance, if any should have been granted by the judge or the meeting; but not if the judge and the meeting should both have refused to grant it.

Should there be any difference between the amount fixed by the judge and that fixed by the meeting, the amount fixed by the latter shall be given the preference.

TITLE XIII.

PROCEEDINGS IN BANKRUPTCY.[1]

ART. 1316. In accordance with the provisions of article 1[2] of the Code of Commerce, amended by the law of July 30, 1878, every merchant, even though not inscribed in the roster of his class, who makes an application in bankruptcy shall be subject to the procedure provided therefor in said code and in this title, and can not subject himself to the procedure prescribed for insolvency proceedings.

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[1] The law refers to the provisions of the Code of Commerce of 1829, for which reason the articles in question are inserted as notes.

[2] This article is as follows:

"ARTICLE 1. Those who have the legal capacity to trade and base their civil status thereon, and who devote themselves habitually and ordinarily to commercial traffic, and are, in addition inscribed in the roster of merchants, shall, for all legal purposes, be considered merchants, and, as such, subject to the provisions of this code.

"Failure to be inscribed in the roster does not exempt the person engaged in commerce from being subject in court to the provisions of this code, which shall be applicable to him, on the petition of a legitimate party, from the moment he announces to his creditors that he has suspended or postponed the payment of his obligations which are due."

Judges shall not allow petitions for a declaration of insolvency and shall make a declaration of bankruptcy with regard to those who may be in said position.[1]

ART. 1317. The provisions prescribed for insolvency proceedings in the foregoing title shall be applicable to all cases which are not provided for in the Code of Commerce and in this title, and they shall be considered supplementary hereto.

ART. 1318. In the bankruptcy of railway, canal, and other companies of a similar character engaged in public works, subsidized by the State, the special provisions prescribed by the law of November 12, 1869, shall be observed.[2]

ART. 1319. The procedure for the bankruptcy of merchants shall be divided into five sections, the proceedings relating to each section being entered in the proper separate record, which shall be subdivided into the number of branches which may be considered necessary for an orderly and clear procedure and for speedy action, unretarded by incidental matters that can not be heard and determined at the time.

ART. 1320. The first section shall include all that relates to the declaration of bankruptcy, the provisions consequent thereto and the enforcement thereof, the appointment of trustees and matters relating to their removal and renewal, and the settlement between the creditors and the bankrupt by which the proceedings are terminated.

The second shall include the proceedings had for the seizure of the property of the bankrupt and all that relates to the administration of

[1] The Code of Commerce of 1829 required for a declaration of bankruptcy that the bankrupt be a merchant, this fact to be determined by the engagement in commerce and the inscription in the commercial registry. (*Decision of February 15, 1875.*) The last requisite has not been necessary since the promulgation of the law of July 30, 1878, and is not required by article 1 of the code of 1885.

After the record of an execution against the bankrupt has been consolidated with the bankruptcy proceedings, with the consent of the judgment creditor, any incident of the execution can not be separated from the bankruptcy.—*Decision of August 18, 1863.*

All executory proceedings pending against the bankrupt must be consolidated to the universal bankruptcy proceedings.—*Decision of April 9, 1864.*

Civil actions against the bankrupt pending at the time of the declaration of bankruptcy and those instituted against his property must be heard and determined with the trustees as parties thereto.—*Decision of April 11, 1864.*

In order that universal bankruptcy proceedings may include executory process against the bankrupt, it is necessary that said executory proceedings have been instituted after the bankruptcy proceedings were instituted, or that they were pending at the time thereof.—*Decision of June 14, 1866.*

Every assignment of property made by merchants is understood to be a bankruptcy and shall be governed by the commercial laws.—*Decisions of March 20, 1873, and March 20, 1875.*

A person who is not a merchant can not apply for a declaration of bankruptcy nor be adjudged a bankrupt.—*Decision of December 21, 1874.*

[2] See law in Appendix.

the bankruptcy until its final liquidation and the rendition of accounts by the trustees.

The third, the actions which may have been instituted on account of the retroactive effects of the bankruptcy on the contracts and acts executed by the bankrupt prior to the adjudication.

The fourth, the examination and acknowledgment of the claims against the bankrupt and the classification and payment of the creditors.

The fifth, the classification of the bankruptcy and the discharge of the bankrupt.

SECTION I.—*Declaration of bankruptcy.*

ART. 1321. A petition for a formal declaration of bankruptcy may be made by the bankrupt himself or by any legitimate creditor whose right arises from commercial obligations.[1]

[1] "As prescribed by article 1323 of the law of civil procedure, in accordance with the provisions of article 1016 of the Code of Commerce of 1829 and 875 of the code in force, of 1885, a formal declaration of bankruptcy may be requested by the bankrupt himself or by any legitimate creditor whose right is based upon commercial obligations, and in accordance with article 1324 of the said law of procedure the statement of the merchant who states that he is a bankrupt must be presented in the manner prescribed in articles 1017 to 1022 of said code of 1829, otherwise not having any legal effects whatsoever and it can not even be acted upon."—*Decision of March 8, 1883.*

It is necessary, according to article 876 of the Code of Commerce of 1885, for a declaration of bankruptcy at the instance of a creditor that the request be based on an title by virtue of which an execution or writ of attachment was issued, and that the results of the attachment should not be sufficient to cover the payment.

A declaration of bankruptcy in accordance with the same article will also be proper at the instance of creditors who, although they have not obtained a writ of attachment, prove their credits and that the merchant has generally defaulted in the payment of his current obligations and that he has not presented his proposition of settlement in the case of suspension of payments within the period fixed in article 872 of said code.

At the present time it is not necessary that the unpaid obligations be commercial, as the new code does not so provide in its article 874, thus abolishing by this silence on the point any difference between the debts which a merchant does not pay. This article is as follows: "A merchant shall be considered in a state of bankruptcy who does not meet his current obligations."

The new Code of Commerce sanctions the existence of another intermediate commercial condition prior to the bankruptcy, which is the suspension of payments, and to which it devotes articles 870 to 873.

The declaration of bankruptcy relates always to the day on which payments were suspended, whatever be the date upon which said declaration becomes final, and consequently article 1014 of the Code of Commerce (the old code) is not violated if said declaration is made at a time when the bankrupt has ceased being a merchant, provided that he was such on the day of the suspension of payments.—*Decision of June 19, 1863.*

Civil actions pending against the bankrupt at the time the declaration of bankruptcy is made, and those instituted thereafter, must be continued and determined with the trustees, who are his legal representatives and obliged to fulfill the obliga-

ART. 1322. A petition of a merchant in bankruptcy must be presented drafted in the manner and together with the papers prescribed by the provisions of articles 1017, 1018, 1019, 1020, 1021, and 1022 of the Code of Commerce.

Otherwise the petition shall not be allowed nor shall the presentation thereof so benefit the party in interest as to consider that he has complied with the obligation imposed upon him by article 1017 of the said code.[1]

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tions legitimately contracted by the bankrupt at the proper time.—*Decision of April 11, 1864.*

The privilege which the Code of Commerce grants to legitimate creditors, in a proper case, to demand the formal declaration of the bankruptcy of their respective debtors can only be understood as limited or restricted by the agreements they may have made with each other when it should appear therefrom, or when it can be legitimately deduced, that such has been the will of the contracting parties.

When, according to the provisions of articles 1003, 1016, and 1025 of the Code of Commerce (870, 874, and 876 of the code in force), a declaration of bankruptcy is proper on account of the debtor having temporarily suspended his payments and demanded an extension from his creditors, it may be ordered, at the instance of any of them, even though there should not be a prior spontaneous statement on the part of the debtor, provided that the indispensable circumstance of his refusal to pay his obligations appears previously in due form.—*Decision of June 8, 1868.*

In the case of the bankruptcy of an association the individual creditors of the partners are not included among those of the association, but after the debts of the latter have been paid said debtors may make use of their rights against the balance remaining.—*Decision of December 29, 1870.*

A state of bankruptcy must be declared by a judicial order at the instance of the bankrupt or of a legitimate creditor.—*Decision of March 20, 1873.*

When a merchant who has been declared a bankrupt requests that he be allowed to assign all his property, it renders it unnecessary for the creditors to prove their personal capacity and a cessation or refusal to make payments.—*Decision of November 18, 1884.*

[1]The articles of the Code of Commerce herein referred to are as follows:

"ARTICLE 1017. It is the duty of every merchant finding himself in a state of bankruptcy to advise the judge of first instance of his domicile thereof within the three days following that on which he has suspended the payment of his current obligations, filing for this purpose in the office of said court a statement showing that he is a bankrupt and designating his residence, offices, warehouses, and all other commercial establishments.

"ART. 1018. To the statement in which the bankrupt states that he is a bankrupt shall be attached:

"1. A general balance sheet of his business.

"2. A report or statement setting forth the direct and immediate causes of his bankruptcy.

"ART. 1019. In the general balance the bankrupt shall include a list of all his real and personal property, goods, and commercial stock, affixing a value to the same, his credits and rights of every kind, as well as a list of his unpaid debts and obligations.

"ART. 1020. To the account of the causes of the bankruptcy the bankrupt may attach all the documentary proof he may desire.

"ART. 1021. Both the statement of bankruptcy and the balance sheet and the report prescribed in article 1018 shall bear the signature of the bankrupt, or that of

ART. 1323. A creditor who files a petition praying that his debtor be declared a bankrupt shall be obliged, above all, to prove his personal capacity by means of the certified copy of the execution issued at his instance against the debtor, or by means of an authentic document proving his credit, with which previous requisite the evidence which he may present, with regard to the details mentioned in article 1025 of the Code of Commerce, shall be admitted.

After said matters have been sufficiently proven, the judge of first instance shall make the declaration of bankruptcy without a citation nor a hearing of the bankrupt, ordering that the other steps be taken consequent thereupon.[1]

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the persons authorized under his liability to sign said documents by special power of attorney, of which an authentic copy shall be attached, without which requisite they shall not be admitted.

"ART. 1022. When the bankruptcy is that of a company in which there are general partners, there shall be included in the statement the name and domicile of each. All the partners who reside in the town at the time of making the declaration of bankruptcy shall sign the statement as well as the other documents which are to accompany the same."

Of the six preceding articles of the Code of Commerce of 1829, only article 1017 is partly reproduced in article 871 of the code at present in force.

Art. 1019 of the Code of Commerce relates to a case where a merchant has stated that he is a bankrupt, and is not applicable to the case where the declaration has been made at the instance of a creditor by virtue of the provisions of article 1060, and the balance sheet is not furnished.—*Decision of June 22, 1867.*

According to article 1035 of the Code of Commerce of 1829, the bankrupt is *de jure* separated and inhibited from administering any of his property, and it must be considered, according to article 1001, that this state exists and must be enforced from the date on which the merchant suspends the payment of his current obligations, for which purpose the court, in accordance with the provisions of article 1024, must fix the date in question, to which the effects of the declaration of bankruptcy shall be retroactive, and, therefore, all the acts of ownership or administration performed or which may be performed by the bankrupt after said date are null and void.—*Decision of March 3, 1874.*

The disqualification of the bankrupt to administer his property is also established by article 878 of the Code of Commerce in force, and articles 880 and 881 of the same law state the acts performed by him which are null and may be annulled.

[1] Article 1025 of the Code of Commerce herein referred to is as follows:

"In order to secure a declaration of bankruptcy at the instance of a legitimate creditor, without the bankrupt making a voluntary statement, it is indispensable that he first prove in due form the suspension of payments by the debtor, either by having generally defaulted in the payment of his current obligations, or by his flight or concealment, together with the closing of his offices and warehouses without having left any person as his representative in charge thereof, and of the evasion of his obligations."

See article 876 of the code at present in force.

In order that a declaration of the bankruptcy of a general copartnership may be extended to a special partner, it is necessary that he be given a hearing.—*Decision of February 17, 1886.*

ART. 1324. If the bankrupt should oppose the ruling upon the declaration of bankruptcy within the period fixed in article 1028 of the Code of Commerce, a separate record of proceedings shall be formed thereon, beginning with the petition and evidence of the creditor, and a certified copy of said ruling.

The bankrupt may, in view of this data, extend the bases of his opposition, and for this purpose the record shall be delivered to him for a period of three days, if he makes a request therefor in his written opposition.[1]

ART. 1325. The opposition and its extension, if made, by the bankrupt, shall be referred to the creditor; and the ruling above mentioned shall also contain the order for the taking of evidence in this issue for a period of twenty days, which can not be extended, within which period both parties shall be allowed to make the allegations and introduce the evidence they desire, in accordance with article 1031 of the code.[2]

ART. 1326. The creditors jointly opposing the rehearing of the decision upon the bankruptcy, shall exercise their rights upon entering their appearance in the proceedings upon the issue, without there being any retrogression therein.

ART. 1327. If the creditor should agree to the petition of the bankrupt, the judge shall order a rehearing of the ruling upon the declaration of bankruptcy at the first session.

The same shall be done at the instance of the bankrupt in accordance with article 1032 of the Code, if the said petition should not have been opposed within the eight days following the service thereof upon the creditors.[3]

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[1]The text of article 1028 of the Code of Commerce of 1829, which article has no equivalent in the Code at present in force, is as follows:

"ART. 1028. A merchant who is declared in a state of bankruptcy without his having made a statement may petition for a review of such declaration within eight days after its publication, without prejudice to the provisional execution of the orders issued with regard to the person and property of the bankrupt."

[2]The provisions of this article of the Code of Commerce have not been included in the code in force. The text thereof is as follows:

"ART. 1031. The hearing of said issue can not exceed twenty days, during which period there shall be received the proofs which may be presented by either party, and upon the expiration of said period it shall be decided according to the merits of the facts presented, the appeals interposed against the decision which may be rendered being allowed for review, but not for a stay of proceedings."

[3]This article, which also has no equivalent in the Code of Commerce at present in force, is as follows:

"ART. 1032. A rehearing may also be ordered before the expiration of the aforementioned period of twenty days, if the creditor who petitioned for a declaration of bankruptcy agrees thereto, or if he or another legal creditor should not oppose the same within the eight days following the notice of the service which may be made at the instance of the bankrupt."

In order that a rehearing on the ruling referred to in the article we annotate may

ART. 1328. After the period for the taking of evidence has elapsed, the procedure prescribed in articles 754 *et seq.* of this law shall be observed.

The decision rendered may be appealed from for a review but not for a stay of proceedings, according to the provisions of article 1031 of the Code of Commerce.[1]

ART. 1329. If the declaration of bankruptcy should be vacated, the provisions of article 1165 of this law relating to the return to the debtor of his property and papers, and to revesting him in his good will and other rights, shall be observed.

ART. 1330. The action for losses and damages, which, according to article 1034 of the Code, may be brought by the bankrupt against a creditor who may have presented a petition for a declaration of bankruptcy, or who shall have sustained one, through fraud, falsity, or manifest injustice, shall be instituted in the proceedings for a rehearing, and shall be heard and determined according to the procedure prescribed for declaratory actions of greater import.[2]

ART. 1331. The judge shall, at the time of making the declaration of bankruptcy, appoint a registered merchant as the commissioner of the same, and shall issue the other orders which are prescribed by article 1044 of the code.[3]

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be granted, it is necessary that the falsity or legal insufficiency of the matters which served as a basis for the declaration of bankruptcy be proven, and furthermore, that the bankrupt has met all his obligations which may be due.—*Decision of March 24, 1886.*

[1] See note to article 1325 of this law.

[2] Article 1034 of the Code of Commerce herein referred to is as follows:

"Art. 1034. The declaration of bankruptcy being vacated by the order for a rehearing, it shall be considered as not having been made and shall not produce any legal effect whatsoever. The merchant against whom it was issued may institute an action to recover losses and damages, if there should have been fraud, falsity, or manifest injustice."

This article has been partly replaced by article 885 of the Code of Commerce in force.

[3] This article is as follows:

"ART. 1044. When a court of first instance issues a declaration of bankruptcy, the following measures shall also be taken:

"1. The appointment of a registered merchant as commissioner of bankruptcy if there should be such merchant.

"2. The detention of the bankrupt in his residence if he at once gives bail, or otherwise his confinement in the jail.

"3. The judicial seizure of all the belongings of the bankrupt and of the books, papers, and documents of his business.

"4. The appointment of a depositary who shall be a person in whom the court of first instance has confidence, who shall be charged with the preservation of all the seized property of the debtor, until the trustees are appointed.

"5. The publication of the bankruptcy by edicts in the town of the domicile of the bankrupt, and in the other towns where he may have commercial establishments,

If there should not be a registered merchant competent to act as commissioner at the place where the proceedings are being held, the judge of first instance shall discharge the duties which, according to article 1045 of the Code, appertain to said office, excepting those mentioned in number 4 thereof, and other duties which appertain exclusively to the trustees or to the depositary in insolvency proceedings.[1]

ART. 1332. Without prejudice to the complaint of the bankrupt against the declaration of bankruptcy, as soon as the ruling thereupon is rendered, the commissioner shall be informed of his appointment by means of an official communication from the judge of first instance, and the former shall proceed to take possession of the property and papers of the bankrupt and make an inventory of the same and their deposit, performing all this in accordance with the provisions contained in articles 1046, 1047, and 1048 of said Code.[2]

ART. 1333. For the arrest of the bankrupt a warrant shall be issued to any of the bailiffs (*alguaciles*) of the court, in accordance with the

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and its insertion in the newspaper of the place or of the province, should there be one.

"6. The detention of the correspondence of the bankrupt for the purposes and in the manner prescribed in article 1058.

"7. The calling of the first general meeting of the creditors of the bankrupt."

This article has not been reproduced in the Code of Commerce in force.

[1]The article of the Code of Commerce herein referred to, which has no equivalent in the Code in force, is as follows:

"ART. 1045. The following are the duties of the commissioner in bankruptcy:

"1. To authorize all the acts of the seizure of the property and papers relating to the business and traffic of the bankrupt.

"2. To take the necessary provisional steps which may be urgent in order to keep in security and good order the property of the estate until, after making a report to the court, it decides what may be proper.

"3. To preside over the meetings of the creditors of the bankrupt that are ordered by the court.

"4. To make an examination of all the books, documents, and papers concerning the business of the bankrupt, in order to be able to furnish such information as the court may call for.

"5. To oversee all the transactions of the depositary and of the trustees of the bankruptcy; to see to the good management and administration of its belongings; to hasten the proceedings relative to the liquidation and classification of the credits, and report to the court any abuses he may observe in any of these matters.

"6. The other duties which are specially assigned to him by the provisions of this Code."

[2]The articles of the Code of Commerce herein referred to are as follows:

"ART. 1046. The seizure of the property and of the commercial papers of the bankrupt shall take place in the following manner:

"1. All the warehouses and deposits of merchandise and effects of the bankrupt shall be closed with two keys, one of which shall remain in the possession of the commissioner, and the other shall be given to the depositary.

"2. The same shall be done with regard to the office or counting room of the bankrupt, the number and condition of the commercial books found being recorded, and there being placed on each of them immediately following the last entry a memorandum of the written pages which they contain, which shall be signed by the judge

provisions of the second paragraph of article 1044 of the Code of Commerce, by virtue of which the bailiff shall, in the presence of the court clerk, require said bankrupt to furnish bail in the sum which the judge may have fixed. If the surety offered be a property owner, or if he should give a mortgage bond or cash as bail, the bankrupt shall be confined to his residence; otherwise he shall be taken to jail, the proper warrant being issued to the warden who is to receive him.[1]

ART. 1334. In order to determine the amount and the character of the bail, the obligations of the surety, and the manner of enforcing the same, in a proper case, the provisions of the Law of Criminal Procedure with regard to such cases shall be observed.

ART. 1335. The court clerk shall post the edicts containing the notice of the bankruptcy, and a memorandum shall be made in the record of this having been done, with a statement of the day and hour when they were posted.

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and by the court clerk. If the books are not kept with the formalities prescribed by the Code, the said officials shall rubricate all their leaves.

"The bankrupt, or other person in his name and with his authority, may attend these proceedings, and, if he should request it, he shall be given a third key, and shall sign and rubricate in such case the books with the judge and the court clerk.

"3. At the time of the seizure of the office an inventory shall be made of the money, drafts, bills of exchange, and other documents of credit belonging to the estate, and they shall be placed in a safe having two keys, the usual precautions being taken for their security and safe-keeping.

"4. The personal property of the bankrupt not kept in a warehouse on which seals can be placed and the live stock shall be turned over to the depositary according to inventory, permitting the bankrupt to retain the furniture and clothing of daily use which the commissioner may consider reasonably necessary.

"5. The real property shall be placed under the temporary administration of the depositary, who shall collect its fruits and products and shall take the precautions necessary in order to avoid any malversation.

"6. With regard to property situated beyond the town of the domicile of the bankrupt, the same proceedings shall be had in the towns where it may be, sending for this purpose the necessary advice to their respective judges.

"If the holders of this property should be persons of means and well-known responsibility, taking into account the value thereof, they shall be appointed depositaries of said property, avoiding the expense of transferring the same to others.

"ART. 1047. When the bankruptcy is of a general partnership, the seizure of property shall include the property of all the copartners who, according to the articles of copartnership, may be liable for the results of the transactions of the association, in the manner prescribed in the foregoing article.

"ART. 1048. The commissioner, with the attendance of the depositary, may examine at will all the books and papers of the bankrupt without taking them from the office, in order to take such notes and information as may be necessary for the discharge of the duties pertaining to him.

"The bankrupt may attend in person or through his attorney at this examination, for which purpose he shall be previously advised of the day and hour it is to take place."

These three articles have no equivalent in the Code of Commerce at present in force.

[1] See note to article 1331.

In order that they may be effective in the other towns where the bankrupt may have commercial establishment, the edicts shall be addressed with a communication to the proper judicial authority in each of said towns, requiring said authorities to make a return of said official communication with a memorandum, drafted immediately after said communication, to the effect that the edicts have been posted. After said communications are received they shall be attached to the record.

In addition to publishing said notices in the official newspapers of the town or province, as prescribed in subdivision 5 of article 1044 of the code, they shall also be inserted in the *Gaceta de Madrid* when the judge considers it advisable, in view of the circumstances of the bankruptcy.

ART. 1336. For the detention of the correspondence of the bankrupt a communication shall be addressed to the postmaster directing him to place said mail at the disposal of the court.

ART. 1337. The bankrupt, his attorney, if he should have one, or the person in whose charge he may have left the administration of his business, if he should have absented himself before the declaration of bankruptcy, shall be cited by a single order (*diligencia*) to attend daily, or upon the days which may be designated at the place and hour fixed by the commissioner for the opening of his correspondence.

Should he not appear at the hour fixed in the citation, the correspondence shall be opened by the commissioner and the depositary.

ART. 1338. The petition of the bankrupt for his liberation, for his release from arrest, or for his safe conduct, shall not be allowed until the commissioner has informed the judge that all the books, documents, and papers relating to the business of the bankrupt have been taken possession of and examined.

ART. 1339. The provisions of articles 1060 and 1061 of the Code of Commerce shall be observed in this separate record, in a proper case.[1]

[1] The text of the articles herein referred to of the Code of Commerce is as follows:

"ART. 1060. If the bankrupt on stating his bankruptcy has not presented the general balance sheet of his business, as prescribed in article 1018, or when a declaration of bankruptcy has been made at the instance of his creditors, he shall be ordered to prepare it in the shortest period deemed necessary, which shall not exceed ten days, being allowed for this purpose to consult in the presence of the commissioner the books and papers of the bankruptcy which he may require, without taking them from the office.

"ART. 1061. If in case of the absence, incapacity, or negligence of the bankrupt, he should not prepare the general balance sheet of his business, the court of first instance shall immediately appoint an expert merchant to prepare the same within a brief and peremptory period, which can not exceed fifteen days, and for this purpose he shall be furnished the books and papers of the bankrupt in the presence of the commissioner and in the office."

These articles have not been reproduced in the Code of Commerce at present in force.

ART. 1340. The commissioner shall file in court the statement of the creditors of the bankrupt, which he must have prepared within the three days following the declaration of bankruptcy, and in view thereof, and taking into consideration the provisions of article 1062 of the code, as amended by the law of July 30, 1878, the day shall be fixed for the holding of the first general meeting, the creditors being called thereto in the manner prescribed in article 1063 of said code.

If there should be creditors whose domicile is unknown, they shall be cited by means of edicts in the manner prescribed in article 1195 of this law.[1]

ART. 1341. The citation of the bankrupt for the meeting shall be made by a writ in the manner prescribed by the respective articles of this law.

ART. 1342. For the holding of the general meeting of creditors, the separate record shall be delivered to the commissioner, together with all the other records in their existing condition, and they shall be kept on file during the meeting, in order that the creditors may at once be given the explanations which they may request concerning the results of all the proceedings which may have been had up to the time of the meeting.

ART. 1343. The commissioner shall examine all the powers of attorney of those who attend the meeting on behalf of other persons, and the provisions prescribed by article 1135 of this law with regard to this case and in the case of representatives holding more than one power of attorney, shall be observed.

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[1] The articles of the Code of Commerce referred to in this article are as follows:

"ART. 1062. The day for holding the first meeting of the creditors shall be fixed with regard to the time that is absolutely necessary, in order that the creditors within the Kingdom may receive the notice of the bankruptcy and may name persons to represent them at the meetings. In no case can the holding of this meeting be postponed more than thirty days after the judicial declaration of bankruptcy.

"If the meeting can not be held, for any reason whatsoever, on the day appointed, the first day possible within the following fifteen days shall be fixed, the same being announced by a simple edict posted within the limits of the court in order that the creditors may be advised thereof, producing the same effects as though the citation were personal.

"In the event that one session should not be sufficient for the purpose of the meeting, it shall be continued on the following days.

"ART. 1063. The commissioner shall prepare, in the three days following the declaration of bankruptcy, a list of the creditors of the bankrupt as shown by the balance sheet, and shall call them to a general meeting by a circular issued for the purpose, which shall be delivered at the domiciles of those who reside in the same town and shall be forwarded by the first mail to the absent ones. A memorandum of both these proceedings shall be made upon the record.

"If the bankrupt has presented a balance sheet, a list of the creditors shall be formed as shown by the ledger, who should be individually called, and if there should not be any ledger, according to the other books and papers of the bankrupt and the information which he or his employees may give."

These articles have no equivalent in the present code.

ART. 1344. The meeting for the election of the three trustees prescribed by article 1068 of the code, as amended by the law of July 30, 1878, shall be held with the creditors attending the same, the provisions of articles 1067, 1069, and 1070 of the said code being observed, as amended by the law mentioned.[1]

After the two votes by call of names have been taken as prescribed by article 1069, a detailed statement shall be drafted thereof, which shall be read before the adjournment of the meeting and shall be signed by the commissioner, the court clerk, the attending creditors, and the bankrupt, or by the person who may have represented him thereat.

ART. 1345. The appointment of trustees may be objected to before the judge, within the period, for the causes and in the manner prescribed in articles 1218 to 1222 of this law.

ART. 1346. When by reason of abuses committed by the trustees in the discharge of their duties, a creditor should request the removal of any of said trustees, the judge shall, in view of the facts upon which the creditor bases his request and the evidence he furnishes thereupon, after hearing the commissioner, decide what he may deem proper.

The same action shall be taken if the commissioner is the one who requests the removal. The judge shall take into consideration any

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[1] The articles of the Code of Commerce of 1829, herein referred to, which have no equivalent in the code at present in force, are as follows:

"ART. 1067. The meeting being called to order on the day and hour fixed for the holding thereof, the creditors shall be advised of the balance sheet and of the report presented by the bankrupt, the commissioner, *ex officio* or at the instance of any of the creditors, at once making all the comparisons which may be considered necessary with the books and documents of the bankruptcy which shall be on hand. The depositary shall also present to the meeting a detailed account as to the assets. He shall also prepare and present an account of the collections made and expenses incurred to date.

"After the foregoing formalities have been fulfilled, the election of trustees shall be proceeded with.

"ART. 1068. Three trustees shall be appointed for every bankruptcy, which number can neither be increased nor reduced.

"ART. 1069. The appointment of the first and second trustees shall be made in the same ballot by the creditors who are present at the general meeting, those being elected who have received the votes which represent the larger portion of the capital.

"The appointment of the third trustee shall be made by the creditors alone whose votes did not elect the first two, the one receiving the greater number of votes being elected.

"The voting shall be by call of names and shall be recorded in the minutes of the meeting.

"ART. 1070. Any creditor of the bankrupt may be elected trustee who appears as a creditor in his own right or as the representative of another, the preference being given to a person who is, or has been, engaged in commerce. The persons elected must be more than twenty-five years of age and permanent residents of the town in which the bankruptcy occurred.

"The appointment of trustees shall be of individual persons and not collectively of any commercial association."

information deemed by him proper and pertinent to the allegations made by said commissioner, and in view thereof and that elicited from the administration record, shall order what he may consider most conducive to the interests of the bankruptcy.

ART. 1347. Orders for the removal of trustees for reasons which do not constitute a crime (*delito*) or misdemeanor (*falta*) shall be considered administrative, and shall not prejudice the character and reputation of the person removed, and the order shall be carried out without any remedy whatsoever being allowed thereagainst.

SECTION II.—*Administration of the bankruptcy.*

ART. 1348. The first papers of the record relating to this section shall consist of a certified copy of the ruling of the declaration of bankruptcy, without containing any other act, and shall be followed by the inventory to be made of all the property of the bankrupt located in the domicile of the same, in accordance with subdivisions 3, 4, and 5 of article 1046 of the code of commerce.[1]

ART. 1349. For the purpose of taking possession, making the inventory and deposit of the property of the bankruptcy, which may be situate at another place, the proper letters rogatory shall be issued to the respective judges, a memorandum thereof being made. The original proceedings had by said judges in consequence thereof shall be returned by the same, and after they have been received they shall be attached to the record.

ART. 1350. For the purpose of withdrawing from the place of deposit or safe any public securities, money, drafts, bills of exchange, or other credit documents belonging to the estate of the bankrupt, a formal order of the commissioner shall be necessary, the execution of which shall be recorded by a memorandum (*diligencia*), which shall be signed by said commissioner, the depositary, and the court clerk.

ART. 1351. The same formality shall be observed for the purpose of depositing funds in the aforementioned safe, in which shall be kept only such funds as may be necessary to meet the expenses of the bankruptcy proceedings, the balance of the cash and public securities being deposited in the establishment authorized by the Government to receive deposits of this character.

ART. 1352. Permission granted by the commissioner for urgent sales of property of the bankrupt, or for the indispensable expenditures which are to be made for the preservation thereof, must also appear in a formal order to serve as a voucher for the depositary.

ART. 1353. Certificates of the appointment of the trustees, their acceptance and their oath of office, shall be attached to this record, there being at once ordered the making of the general inventory and

[1] For this article of the code of commerce see footnote to article 1332.

the delivery to said trustees of the assets and papers of the bankruptcy in the manner prescribed in articles 1079, 1080, and 1081 of the Code.[1]

ART. 1354. In the examination of and the objections to the accounts presented by the depositary, the order prescribed for this matter in insolvency proceedings shall be observed after a report thereon of the commissioner.

ART. 1355. The provisions contained in said insolvency proceedings relating to the necessary expenditures to cover the demands of the bankruptcy proceedings shall also be observed. With regard to the extraordinary expenses which the trustees may propose, the judge shall not authorize them unless they are examined and classified by the commissioner after the extrajudicial investigation which he may consider proper has been secured. If these expenses should not exceed 1,250 pesetas the authorization of the commissioner shall be sufficient.

ART. 1356. For the appraisement and sale of the estate of the bankrupt the provisions prescribed by articles 1084, 1085, 1086, 1087, and 1088 of the code shall be observed, according to the different kind of commercial effects, and other personal and real property.[2]

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[1] The articles of the Code of Commerce herein referred to, which have no equivalent in the Code at present in force, are the following:

"ART. 1079. After the trustees have been appointed and given possession of their offices, they shall proceed to make a general and formal inventory of all the property, effects, books, documents, and papers of the bankruptcy, which the commissioner shall authorize with his attendance.

"The property and effects which may be in the hands of consignees, or which, for any other reason whatsoever, may be in another town than that in which the bankruptcy occurred, shall be included in the inventory in accordance with the balance sheet, books, and papers of the bankrupt, with the proper memoranda, according to the replies which may have been received from their holders or depositaries.

"ART. 1080. The bankrupt shall be cited for the making of the inventory, and may attend the making of the same, either in person or through an attorney.

"ART. 1081. After the inventory has been made, all the property, effects, and papers included therein shall be delivered to the trustees, a receipt being taken therefor; the commissioner shall write the necessary communications in order that there may be placed at the disposal of the trustees the property and effects which may be in other towns."

[2] The text of these articles follows:

"ART. 1084. The trustees, taking into consideration the nature of the commercial effects of the bankrupt, and considering the greatest possible advantages to the interests of the same, shall propose to the commissioner the sale to be made of said merchandise at the proper time, and the judge shall order what may be proper, fixing the minimum price at which the sale can be made, which can not be changed without good cause in the judgment of the commissioner.

"ART. 1085. In the sale of the commercial effects belonging to the bankrupt a broker must take part, and where there is no broker the sale shall be made at public auction, announcing the same at least three days in advance by edicts and notices which shall be published in a newspaper, should there be any in the town.

"ART. 1086. For the regulation of the prices at which the commercial effects of the bankrupt are to be sold the commissioner shall take into consideration their cost, according to the invoice of purchase, and the expenses afterwards incurred, securing

ART. 1357. All the creditors of the bankruptcy, and the bankrupt himself, will be allowed to institute the action permitted by article 1089 of the Code against the trustees who purchase or who may have purchased any of the property of the estate of the bankrupt.[1]

Actions of this character shall be kept in a separate record, and shall be heard and determined in accordance with the procedure prescribed for incidental issues, and without prejudice to the criminal liability which the trustees may have incurred.

ART. 1358. All compromises entered into by the trustees in pending causes relating to the interests of the bankruptcy shall be based upon an order issued by the judge upon the recommendation of the commissioner, in which the bases for the compromise shall be fixed.

ART. 1359. In a separate pamphlet attached to this record a statement shall be entered, signed by the commissioner and by the trustees, of the weekly deposits made in the safe of the amounts collected, the court clerk certifying to the fact that said deposit was made.

A similar formality shall be observed for the withdrawal of the amounts made by virtue of warrants issued by the said commissioner and of those deposited in the public establishment.

ART. 1360. The commissioner shall be informed of the statements made by the creditors in view of the monthly reports which the trustees must present and with regard to the state of the administration of the bankruptcy, and in view of the report of the commissioner the judge shall issue the orders which he may consider proper to the interest of all parties to the proceedings.

ART. 1361. The orders which the commissioner may issue with regard to the administration of the bankruptcy in the discharge of his duties may be amended by the judge, at the instance of the trustees or of any of the persons interested therein, in which cases the judge

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the advance over the current price of goods of like kind and quality in the same commercial center which may be possible.

"If it should be necessary to make a price lower than their cost, including expenses, the sale of the goods must take place at public auction.

"ART. 1087. The trustees shall appraise the personal property of the bankrupt which does not consist of commercial goods, and the real property, for which purpose experts shall be appointed by them and by the bankrupt, or by the commissioner, if the latter does not do so. In case of disagreement the court shall appoin' a third expert.

"ART. 1088. The sale of the real property and of the personal property, excepting the commercial effects, of the bankrupt shall take place at a public auction with all the formalities of law, it being otherwise null and void."

[1] This article of the Code of Commerce of 1829 is as follows:

"ART. 1089. The trustees can not purchase for themselves, nor for others, the property of the bankrupt, whatever may be its kind, and if they should do so in their own name, or in the name of another, the goods so acquired shall be confiscated for the benefit of the estate of the bankrupt, and they shall be obliged to pay the price thereof if they have not already done so."

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LAW OF CIVIL PROCEDURE.

268

shall proceed summarily in view of the request which may be made and the report of the commissioner thereon.

ART. 1362. The accounts of their administration rendered by the trustees shall also be attached to this separate record. Said accounts shall be examined in accordance with the provisions of articles 1134 and 1135 of the Code, and if any opposition should be made thereto, either by a resolution of the meeting of creditors or by the bankrupt or any individual creditor, this opposition shall be heard and determined according to the procedure prescribed for an ordinary action, which shall be instituted in this separate record, if all the proceedings concerning the administration of the bankruptcy should have been completed, or otherwise, if the liquidation thereof should not have been terminated, in a separate record.

ART. 1363. The claims of the creditors or of the bankrupt against the trustees for losses and damages caused to the parties in interest by fraud, malversation, or culpable negligence, shall be alleged, heard, and determined in a separate record, dependent upon this record, the proceedings prescribed for ordinary actions being pursued.

SECTION III.—*Retroactive effects of a bankruptcy.*

ART. 1364. The power to demand the retroaction of acts which the bankrupt may have performed at improper times to the prejudice of the bankruptcy proceedings, or which may be annulled on account of their fradulent character, even though they should have taken place at proper times, is vested in the trustees, as the representatives of the creditors and the legal administrators of the estate of the bankrupt.[1]

ART. 1365. If the creditors should observe any omission on this point they shall address themselves to the commissioner, who, in view of the facts of the case, shall order such measures to be taken as may be necessary in order that the creditors may institute the actions which they may consider proper, and should he not do so the person interested may complain to the judge of the bankruptcy.

ART. 1366. The trustees are obliged to prepare, within ten days after the books and papers of the bankruptcy have been delivered to them, the following statements:

A statement of the payments made by the bankrupt during the fifteen days preceding the declaration of bankruptcy on account of debts and direct obligations not yet due.

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[1] An undoubted and uncontroverted fact that a merchant did not state that he was a bankrupt and present the proper documents within three days after having suspended the payment of his obligations, does not carry with it the impossibility of declaring by virtue of other proofs that the insolvency is fortuitous; but it prevents any allowance being made to the bankrupt for maintenance, in accordance with the provisions of article 1098.—*Decision of July 14, 1888.*

Another of the contracts entered into during the thirty days prior to the declaration of bankruptcy, which, by reason of their fraudulent character, are *de jure* null and void in accordance with article 1039 of the Code of Commerce, and of the donations, *inter vivos*, which are included in the provisions of article 1040.[1]

ART. 1367. The statements referred to in the foregoing article shall be verified and viséd by the commissioner, after which the trustees shall address extrajudicial requests to the persons interested, requesting them to refund to the estate such property as may belong to the same; and if said requests should be of no effect, the trustees shall adopt the legal measures which may be proper according to the objects of each claim, with the prior authorization of the commissioner.

ART. 1368. The trustees shall also make another statement of the contracts entered into by the bankrupt which are included in any of the four cases of article 1041 of the Code, making the proper investigations in order to convince themselves as to whether any fraud was committed in their execution or not; and if there should be any evidence tending to show that fraud was committed in any of them, they shall make a detailed report thereon to the commissioner, who, in view thereof and of the results of the investigations he may personally make, shall grant or refuse to grant authority for the trustees to institute the actions which they may have recommended in said report.[2]

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[1] The articles of the Code of Commerce of 1829 herein referred to are as follows:

"ART. 1039. Contracts entered into by a bankrupt during the thirty days preceding his bankruptcy shall be considered fraudulent and therefore null and void, provided they are of the following kinds:

"1. All transfers of real estate made without consideration.

"2. Dowry grants of private property made to his children.

"3. Assignments and transfers of real property made in the payment of debts not yet due at the time of the declaration of bankruptcy.

"4. Conventional mortgages on obligations of a prior date which do not have this character and on loans of money or merchandise, the delivery of which had not taken place at the time of contracting the obligation before a notary and the witnesses taking part therein. (This article is covered by article 880 of the code at present in force.)

"ART. 1040. Gifts, *inter vivos*, which do not have the well-known character of remunerations, which have taken place after the last balance, shall be included in the provisions of the foregoing article if it should show liabilities greater than the assets of the bankrupt." (This article is also included in the provisions of article 880 of the code in force.)

[2] The article herein referred to, and which is covered by article 881 of the Code of Commerce at present in force, is as follows:

"ART. 1041. The following may be annulled at the instance of the creditors by proving that the bankrupt acted with the intention of defrauding them of their rights:

"1. The alienation for a valuable consideration of real property made in the month preceding the declaration of bankruptcy.

"2. The creation of dowries or acknowledgment of having received moneys made by a merchant spouse in favor of the other spouse in the six months preceding the bankruptcy, provided they do not consist of real property which was inherited b-

ART. 1369. The actions instituted by the trustees in accordance with article 1038 of the Code of Commerce shall be presented, accompanied by the documentary evidence proving the fact that payment was made at an improper time and that the obligation did not reach maturity until after the declaration of bankruptcy. In a necessary case the trustees may prepare their action with the confession in court of the debtor.[1]

ART. 1370. The complaint of the trustees and the documents accompanying the same shall be referred to the defendant for a period of three days, within which period he shall make such statements as he may consider proper.

ART. 1371. Should the debtor not make answer to the complaint, or if he should not rebut therein the evidence of the trustees, he shall be adjudged to return the property.

ART. 1372. If in view of the answer of the debtor the judge should deem it proper to take evidence upon the matter, he shall order that it be submitted for a period of eight days, which can not be extended, and after said period the issue shall be decided according to the procedure prescribed in Articles 754 to 757 of this law.

ART. 1373. For the purpose of returning to the estate the property withdrawn therefrom by virtue of contracts which have become null and void *de jure*, by virtue of the provisions of article 1039 of the Code of Commerce, summary proceedings for the recovery thereof shall be instituted, and the trustees shall prove by means of the instrument of the contract that it is null and void under the law.[2]

ART. 1374. Orders issued for the application of articles 1038, 1039, and 1040 of the Code of Commerce shall be executed, even if an appeal be taken therefrom.[3]

ART. 1375. Actions for the annulment or revocation of contracts entered into by the bankrupt for the purpose of defrauding his cred-

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the latter from his or her ascendants, or acquired or possessed previously by the spouse in whose favor the assignment of the dowry or receipt of moneys was made.

"3. All acknowledgments of the receipt of money or of instruments as evidence of loans, which, having been made six months before the bankruptcy, in a public instrument, are not proven as having taken place by means of a notarial statement; or if, after having been made in a private instrument, they should not conform to the entries in the books of the contracting parties.

"4. All contracts, obligations, and commercial transactions of the bankrupt which are not prior to the declaration of bankruptcy by ten days at least."

[1] The article of the former Code of Commerce herein referred to, and which is covered by article 879 of the code in force, reads as follows:

"ART. 1038. The amounts which the bankrupt may have paid in cash, securities or certificates of credit in the fifteen days preceding the declaration of bankruptcy, by reason of direct debts and obligations, which fell due after the latter, shall be returned to the assets by the persons who received the same."

[2] For article of Code of Commerce referred to, see note to Article 1366.

[3] See notes to articles 1366 and 1369 for the articles herein referred to.

itors, shall be heard and determined in the declaratory action which may be proper in view of the amount involved and in the court which is competent to take cognizance thereof.

SECTION IV.—*Examination, classification, and payment of credits against the estate of the bankrupt.*

ART. 1376. The separate record corresponding to this section shall commence with the general statement of the creditors of the bankrupt, and the judge shall make an order thereafter fixing the period within which said creditors are to present to the trustees the written evidence of their credits, and the day on which the meeting is to be held for their examination and acknowledgment, these periods being fixed in accordance with the provisions of article 1101 of the Code of Commerce.[1]

The fact of the transmission of this order to the creditors shall be included in the record by means of a communication from the trustees to the commissioner; and that said order has been made public by edicts and its insertion in the newspapers by an entry made by the clerk.

ART. 1377. The consolidation with the bankruptcy proceedings of actions pending or which may be instituted against the estate of the bankrupt shall take place in accordance with the rules prescribed for such cases in insolvency proceedings.

ART. 1378. After all the proceedings prescribed for the establishment and examination of credits in articles 1102, 1103, 1104, and 1105 of the Code of Commerce, have taken place, if any of the creditors or the bankrupt should consider themselves injured by the resolution of the meeting, they may make use of their rights before the court taking cognizance of the bankruptcy proceeding, within the period of thirty days, which can not be extended.[2]

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[1] This article of the Code of Commerce, which has no equivalent in the code in force, is as follows:

"ART. 1101. The judge taking cognizance of the bankruptcy proceedings, as soon as the trustees are appointed, and taking into consideration the amount of business, and the distances at which the creditors are respectively residing, shall fix the period within which the latter must present to said trustees the written evidence of their credits, which period can not exceed sixty days.

"In the same order there shall also be fixed the day on which the meeting for the examination and acknowledgment of credits is to be held, which shall be the twelfth day after the day on which the period for the presentation of documents expires.

"The trustees shall take care to forward this order to all the creditors, and shall also have it made public by means of edicts, also inserted in the newspapers, should there be any in the town or in the province."

[2] These articles of the Code of Commerce are as follows:

"ART. 1102. The creditors are obliged to deliver to the trustees the written evidence of their credits within the period of time fixed, with true copies thereof, in order

ART. 1379. The actions instituted by the creditors with regard to the acknowledgment of credits or with reference to exceptions taken to their classification shall be governed by the procedure established for insolvency proceedings.

SECTION V.—*Classification of the bankruptcy and discharge of the bankrupt.*

ART. 1380. The separate record corresponding to this section shall be commenced with the report which the commissioner is obliged to give to the judge of first instance, upon the result of the examination of the books and papers of the bankrupt with regard to the acts which are to serve as a basis for the classification of the bankruptcy, in accordance with article 1138 of the Code of Commerce.[1]

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that after they have been compared by the trustees and found correct, they may place a memorandum at the foot thereof to the effect that, having been found correct, they retain the originals in their possession, and in this manner return the copies to the persons interested for the protection of their rights.

"ART. 1103. The trustees, as they receive the documents from the creditors, shall compare them with the books and papers of the bankrupt and shall make a separate report on every credit in accordance with the result of said examination and other information which they may have.

"ART. 1104. Within the eight days following the expiration of the period for the presentation of the written evidence of the creditors, the trustees shall prepare a general statement of the creditors against the estate who may have appeared at the verification, with the proper reference in each section in numerical order of the document presented by the person interested, and shall transmit the same to the commissioner, a copy being given to the bankrupt, or to his attorney in fact, for his information.

"The commissioner shall close the statement of the credits, and in consequence hereof the creditors who appear subsequently shall be considered negligent.

"ART. 1105. After the creditors have met on the day fixed for the meeting for the examination and acknowledgment of credits, the general statement of said credits, of the respective documents for verification and the report of the trustees on each shall be read. All the creditors present and the bankrupt in person or through an an attorney, may make such remarks on each section as they may consider proper. The person interested in the credit, or his representative, shall answer in the manner he may deem proper, and the acknowledgment or rejection of each credit shall be decided by a majority of votes, said majority consisting of one over one-half the number of voters who represent three-fifths of the total of the credits held among all of them.

"The resolution of the meeting does not impair the right of each and every one of the creditors of the bankruptcy; of the person interested in the credit disputed and of the bankrupt, if they consider themselves injured, to exercise such actions at law which they may consider proper, the creditor whose credit may not have been acknowledged being in the meantime deprived of taking an active part in the bankruptcy proceedings."

[1] The text of the article herein referred to is as follows:

"ART. 1138. In order to classify the bankruptcy, the following shall be taken into consideration:

"1. The conduct of the bankrupt in the fulfillment of the obligations imposed upon him by articles 1017 and 1018.

ART. 1381. The trustees shall, within fifteen days from the time of their appointment, present the statement referred to in article 1140 of the code, which shall be referred with the record to the deputy public prosecutor (*promotor fiscal*).[1]

The trustees in their statement, as well as the *promotor fiscal* in his review, shall make a formal petition with regard to the classification of the bankruptcy, and after being attached to the record, it shall be referred to the bankrupt for a period of six days in order that he may make answer to said petition.[2]

ART. 1382. If the bankrupt does not answer, or if he returns the record without objecting to the petition of the trustees or of the *promotor fiscal*, the judge shall order that the record be brought before him and shall make the classification which he may consider according to law, in accordance with what may be shown by the separate record and the declaration of bankruptcy, which shall also be taken into consideration.

ART. 1383. If the bankrupt should object to the petition of the trustees or of the *promotor fiscal*, evidence shall be taken upon the matter and the proceedings shall be continued in accordance with the procedure established in this law for incidental issues, it being permissible to extend the period for the taking of evidence, if requested by the parties, to the maximum of forty days prescribed in article 1142 of the Code of Commerce.[3]

"2. The result appearing from the balance sheets which may be made of the commercial status of the bankrupt.

"3. The condition of the commercial books.

"4. The statement to be submitted by the bankrupt with regard to the immediate and direct causes of the bankruptcy, or what may appear from the books, documents, and papers of the bankrupt as to the true reason for the failure.

"5. The merits of the claims which may be made against the bankrupt and his property during the course of the proceedings."

This article has no equivalent in the Code of Commerce in force.

When the bankruptcy is not classified, the fulfillment of the agreements made between the bankrupt and his creditors depends upon the definite result of the separate classification proceedings, excepting in the case mentioned in article 1145 of the Code of Commerce: It is necessary to suspend the approval of such agreements if the trustees of the bankruptcy should have requested a declaration of fraudulent bankruptcy, and should this be done, such agreements shall be null and void.—*Decision of March 18, 1865.*

[1] The following is the text of the article herein referred to, which has no equivalent in the Code of Commerce of 1885:

"ART. 1140. The report of the commissioner and the statement of the trustees shall be referred to the *promotor fiscal* of the court, in order that, if he should find that a crime or misdemanor has been committed, he may institute proceedings for the punishment thereof in accordance with law."

[2] Simulation and fraud are not presumed. *Decision of March 16, 1883.*

[3] Article 1142 of the Code of Commerce herein referred to is as follows:

"In case of objection the trustees and the *promotor fiscal*, as well as the bankrupt, may utilize the legal means of evidence in order to prove the facts which they may have respectively alleged. The period within which to submit this evidence can not exceed forty days."

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The judgment which may be rendered may be appealed from for a review and for a stay of proceedings; but, nevertheless, should there be any provisions relating to the liberty of the bankrupt, they shall be carried out.

ART. 1384. The provisions of article 1143 of the Code shall be observed for the judgment and its execution.[1]

If the classification proceedings should show reasons to classify the bankruptcy as fraudulent, or that property has been concealed, the judge shall order a transcript made of what may be necessary, in order to institute criminal proceedings against the bankrupt.

There shall be no remedy whatsoever against this order.[2]

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[1] The Code of Commerce of 1885 has no equivalent for the article of the Code of 1829 herein referred to, which is as follows:

"ART. 1143. In view of what has been alleged and proven by the trustees, the *promotor fiscal*, and the bankrupt, the judge shall make the definite classification of the bankruptcy when he considers it of the first or second class, in accordance with articles 1003 and 1004, and shall order that the bankrupt be placed at liberty, if he should still be under arrest. The bankrupt, the trustees, and the *promotor fiscal* may appeal from the order, which appeal shall be allowed for a review and stay of proceedings, the provisions, nevertheless, relating to the liberty of the bankrupt being carried out, should there be any thereupon."

[2] The purpose of commercial bookkeeping which is established in the Code of Commerce in its second book (Title 3 of Book I of the code in force, articles 33 to 49) is to determine exactly, whenever it should be necessary, the condition of a commercial establishment with regard to merchandise as well as money and securities, and to fix the assets and liabilities by means of the corresponding general balance, a result which it would be impossible to arrive at without keeping the three books specified in article 32 of the said code (33 of the code in force) and which, according to article 40 (art. 36 of the code of 1885), every merchant is obliged to open; therefore a noncompliance with the provisions of this article may give rise to frauds to the prejudice of the creditors and, what is still more serious, of credit in general, which is the first element of commerce and which must be fully guaranteed by law, in order that it may not be impaired in any manner whatsoever. All the provisions of the code relating to bookkeeping are for the purpose of infusing confidence and closing the doors to fraud and insure the fulfillment of commercial agreements. For this reason, in case of a bankruptcy, the nonpresentation of the books gives rise to a doubt as to the good faith of the bankrupt, because it can not be ascertained whether property or securities have been concealed and whether there have been losses, and the cause thereof, and whether in the statement of the creditors some fictitious creditors have been included or the amounts of their credits altered.

In stating in the code as a sufficient cause for the declaration of a bankruptcy of the fourth class that books have not been kept, it must be understood to the effect that all the books therein mentioned must be kept, without the fact that some of them have been kept altering the classification, because in this manner the object which the legislator had in view will not be obtained and which are required by transactions of trust in commerce when credit is made use of.—*Decision of June 20, 1860.*

After the declaration of bankruptcy has been made and it has been classified as fraudulent of the fourth class, the institution of criminal proceedings being ordered, article 1007, number 2, 1144 of the Code of Commerce (890 and 896 of the one in force), and the one we annotate must be fully applied, the classification of the fraudulent insolvency being of the exclusive competency of the adjudging chamber, against which an appeal for annulment of judgment shall not be allowed.—*Decision of June 24, 1881.*

ART. 1385. The trustees shall not perform any act, as such, in the criminal proceedings which may be instituted against a bankrupt of the third, fourth, or fifth class, except by virtue of a resolution of the general meeting of creditors.

Any creditor who exercises in said proceedings any of the causes of action appertaining to him in accordance with the criminal laws, shall do so at his own expense, and in no case shall he have any claim against the estate of the bankrupt for the results of the action.

ART. 1386. The petitions of bankrupts for their discharge shall be heard and determined, after the conclusion of the classification proceedings, in the same record of said classification proceedings, according to the provisions of Title XI, Book IV, of the Code of Commerce.

As soon as the commissioner renders the report prescribed in article 1173 of the said code, the record shall be transmitted to the *promotor fiscal*, in order that he may give his opinion as to whether the discharge is proper, and without further proceedings the judge shall render the decision which he may deem just, in accordance with said article.[1]

The decision which may be rendered may be appealed from for review and for a stay of proceedings.

SECTION VI.—*Settlements between creditors and the bankrupt.*

ART. 1387. In accordance with the provisions of article 1147 of the Code of Commerce, as amended by the law of July 30, 1878, no proposition for settlement between the bankrupt and his creditors shall be admitted which is presented before the conclusion of the examination and acknowledgment of the credits and before the classification of the bankruptcy has been made.[2]

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[1] The following is the text of the article herein mentioned:

"ART. 1173. To the petition for discharge shall be attached the original receipts showing that the creditors have been paid.

"The court shall charge the commissioner to make an examination of the documents submitted by the bankrupt and of all the data relating to the bankruptcy proceedings, and report as to whether the discharge may be granted in accordance with the provisions of articles 1171 and 1172, in the respective cases. Should there be no difficulty, he shall order the discharge, or otherwise he shall refuse it, if the bankrupt on account of his class were disqualified to obtain it, or shall suspend it if some requisite only is missing which may be corrected."

A portion of the provisions of this article have been included in article 921 of the code in force.

[2] The precepts of article 1147 have been copied in article 898 of the code in force. The text of the former follows:

"ART. 1147. After the termination of the proceedings for the examination and acknowledgment of credits, and after the bankruptcy has been classified, the bankrupt may submit propositions for settlements, if he should not have been included in the third, fourth, or fifth class, and may request the court to call a meeting of his creditors, for which purpose he shall attach thereto as many copies of said proposals

the delivery to said trustees of the assets and papers of the bankruptcy in the manner prescribed in articles 1079, 1080, and 1081 of the Code.[1]

ART. 1354. In the examination of and the objections to the accounts presented by the depositary, the order prescribed for this matter in insolvency proceedings shall be observed after a report thereon of the commissioner.

ART. 1355. The provisions contained in said insolvency proceedings relating to the necessary expenditures to cover the demands of the bankruptcy proceedings shall also be observed. With regard to the extraordinary expenses which the trustees may propose, the judge shall not authorize them unless they are examined and classified by the commissioner after the extrajudicial investigation which he may consider proper has been secured. If these expenses should not exceed 1,250 pesetas the authorization of the commissioner shall be sufficient.

ART. 1356. For the appraisement and sale of the estate of the bankrupt the provisions prescribed by articles 1084, 1085, 1086, 1087, and 1088 of the code shall be observed, according to the different kind of commercial effects, and other personal and real property.[2]

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[1] The articles of the Code of Commerce herein referred to, which have no equivalent in the Code at present in force, are the following:

"ART. 1079. After the trustees have been appointed and given possession of their offices, they shall proceed to make a general and formal inventory of all the property, effects, books, documents, and papers of the bankruptcy, which the commissioner shall authorize with his attendance.

"The property and effects which may be in the hands of consignees, or which, for any other reason whatsoever, may be in another town than that in which the bankruptcy occurred, shall be included in the inventory in accordance with the balance sheet, books, and papers of the bankrupt, with the proper memoranda, according to the replies which may have been received from their holders or depositaries.

"ART. 1080. The bankrupt shall be cited for the making of the inventory, and may attend the making of the same, either in person or through an attorney.

"ART. 1081. After the inventory has been made, all the property, effects, and papers included therein shall be delivered to the trustees, a receipt being taken therefor; the commissioner shall write the necessary communications in order that there may be placed at the disposal of the trustees the property and effects which may be in other towns."

[2] The text of these articles follows:

"ART. 1084. The trustees, taking into consideration the nature of the commercial effects of the bankrupt, and considering the greatest possible advantages to the interests of the same, shall propose to the commissioner the sale to be made of said merchandise at the proper time, and the judge shall order what may be proper, fixing the minimum price at which the sale can be made, which can not be changed without good cause in the judgment of the commissioner.

"ART. 1085. In the sale of the commercial effects belonging to the bankrupt a broker must take part, and where there is no broker the sale shall be made at public auction, announcing the same at least three days in advance by edicts and notices which shall be published in a newspaper, should there be any in the town.

"ART. 1086. For the regulation of the prices at which the commercial effects of the bankrupt are to be sold the commissioner shall take into consideration their cost, according to the invoice of purchase, and the expenses afterwards incurred, securing

ART. 1357. All the creditors of the bankruptcy, and the bankrupt himself, will be allowed to institute the action permitted by article 1089 of the Code against the trustees who purchase or who may have purchased any of the property of the estate of the bankrupt.[1]

Actions of this character shall be kept in a separate record, and shall be heard and determined in accordance with the procedure prescribed for incidental issues, and without prejudice to the criminal liability which the trustees may have incurred.

ART. 1358. All compromises entered into by the trustees in pending causes relating to the interests of the bankruptcy shall be based upon an order issued by the judge upon the recommendation of the commissioner, in which the bases for the compromise shall be fixed.

ART. 1359. In a separate pamphlet attached to this record a statement shall be entered, signed by the commissioner and by the trustees, of the weekly deposits made in the safe of the amounts collected, the court clerk certifying to the fact that said deposit was made.

A similar formality shall be observed for the withdrawal of the amounts made by virtue of warrants issued by the said commissioner and of those deposited in the public establishment.

ART. 1360. The commissioner shall be informed of the statements made by the creditors in view of the monthly reports which the trustees must present and with regard to the state of the administration of the bankruptcy, and in view of the report of the commissioner the judge shall issue the orders which he may consider proper to the interest of all parties to the proceedings.

ART. 1361. The orders which the commissioner may issue with regard to the administration of the bankruptcy in the discharge of his duties may be amended by the judge, at the instance of the trustees or of any of the persons interested therein, in which cases the judge

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the advance over the current price of goods of like kind and quality in the same commercial center which may be possible.

"If it should be necessary to make a price lower than their cost, including expenses, the sale of the goods must take place at public auction.

"ART. 1087. The trustees shall appraise the personal property of the bankrupt which does not consist of commercial goods, and the real property, for which purpose experts shall be appointed by them and by the bankrupt, or by the commissioner, if the latter does not do so. In case of disagreement the court shall appoin' a third expert.

"ART. 1088. The sale of the real property and of the personal property, excepting the commercial effects, of the bankrupt shall take place at a public auction with all the formalities of law, it being otherwise null and void."

[1] This article of the Code of Commerce of 1829 is as follows:

"ART. 1089. The trustees can not purchase for themselves, nor for others, the property of the bankrupt, whatever may be its kind, and if they should do so in their own name, or in the name of another, the goods so acquired shall be confiscated for the benefit of the estate of the bankrupt, and they shall be obliged to pay the price thereof if they have not already done so."

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"If it should be necessary to make a price lower than their cost, including expenses, the sale of the goods must take place at public auction.

"ART. 1087. The trustees shall appraise the personal property of the bankrupt which does not consist of commercial goods, and the real property, for which purpose experts shall be appointed by them and by the bankrupt, or by the commissioner, if the latter does not do so. In case of disagreement the court shall appoin' a third expert.

"ART. 1088. The sale of the real property and of the personal property, excepting the commercial effects, of the bankrupt shall take place at a public auction with all the formalities of law, it being otherwise null and void."

[1] This article of the Code of Commerce of 1829 is as follows:

"ART. 1089. The trustees can not purchase for themselves, nor for others, the property of the bankrupt, whatever may be its kind, and if they should do so in their own name, or in the name of another, the goods so acquired shall be confiscated for the benefit of the estate of the bankrupt, and they shall be obliged to pay the price thereof if they have not already done so."

ART. 1410. Notwithstanding the provisions of the foregoing article, if the debtor should be included in any of the cases of article 1398, the provisional seizure may also be ordered after the institution of the action, a separate record being made thereof.

The provisions contained in articles 1399 to 1410, inclusive, shall be applicable to this case, and after the attachment has been levied the proceedings thereupon shall be continued as prescribed for incidental issues.

When an attachment is vacated by a final ruling, because it is not included in any of the cases of said article 1398, the plaintiff shall be taxed all the costs and be adjudged to indemnify the defendant for any losses or damages he may have suffered, which shall be recovered in the manner prescribed in article 1415.[1]

ART. 1411. When the provisional seizure becomes of no effect by reason of its having become null *de jure* in accordance with article 1409, the surety shall be ordered cancelled in the same ruling, if any should have been furnished, or what may be proper shall be ordered for vacating the attachment and cancelling the cautionary notice, in a proper case, and all costs shall be taxed against the plaintiff, who shall also be adjudged to indemnify the defendants for any losses and damages he may have incurred.

If the attachment should be vacated for any other reason, the ruling thereupon shall also determine what may be proper according to the cases with regard to cost and the indemnification of losses and damages which may have been suffered.[2]

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defendants would suffer damage to their interests, and the person who commits an injury must not only make good the damages he may have directly caused, but also the injury which may be a consequence of his action, according to law 3, Title XV, Partida 7.—*Decision of April 7, 1868.*

[1] With the exception of the cases referred to in article 1410 of the law of procedure, in which the provisional seizure is requested after the main action has been instituted, the competency to take cognizance of said seizures must be determined by rule 12 of article 63 of the law; that is to say, the judge competent is the one of the place where the property to be attached is situated.—*Decision of March 15, 1887.*

When the attachment treated of in a demand in intervention does not have the character of a provisional seizure, and, furthermore, was not levied for any of the causes specifically mentioned in articles 1410, 1411, and 1416 of the law of civil procedure, said articles can not have been violated, nor can they be cited for the purposes of an appeal for annulment of judgment, and in order for them to be applicable it would be necessary for the creditor to have demanded the attachment of the property, knowing that it was not the property of the debtor, but of a third person.—*Decision of May 27, 1889.*

[2] A decision which denies the ratification of a provisional seizure is not definite for the purposes of an annulment of judgment.—*Decision of January 31, 1884.*

An indemnification for losses and damages is not proper on account of a provisional seizure when the indemnification is requested after the debt has been acknowledged and the proper amount paid, and therefore the annulment of the judgment is not proper on account of the fact that said claim has been denied.—*Decision of March 10, 1885.*

A judgment ordering the raising of a provisional seizure of property is not definite.—*Decision of May 4, 1885.*

ART. 1412. If the acknowledgment of a signature or of the written evidence of a debt should not be made or be delayed through the fault of the debtor, and if the filing of the complaint and the ratification of the attachment should depend thereupon, the time lost in obtaining said acknowledgment shall not be included in the period of time prescribed in article 1409.

ART. 1413. If the owner of the property seized should request it, the attachment creditor must file his complaint within the period of ten days, unless any of the circumstances mentioned in the foregoing article is attendant. Should he not do so, the attachment shall be vacated and the costs, losses, and damages shall be taxed against him.

ART. 1414. After the provisional seizure has been levied, the debtor may object thereto and request that it be vacated, with indemnification of losses and damages, if not included in any of the cases of article 1398.

He may make this petition within the five days following that of the notice of the ruling ratifying the seizure, or before that time, if he should deem it proper, and it shall be heard and determined in a separate record in accordance with the procedure prescribed for incidental issues.[1]

ART. 1415. In cases in which there is an adjudication of losses and damages, as soon as the ruling thereupon becomes final, they shall be recovered according to the procedure established in articles 927 *et seq.*

ART. 1416. In the case of the second paragraph of article 1395, the municipal judge shall order the provisional seizure, if he deems it proper, at the time of issuing the citation for the oral action, and shall ratify or vacate it in the judgment, according as to whether he renders judgment for or against the defendant.

If he renders judgment for the defendant, all the costs shall be taxed against the plaintiff.

He shall also adjudge him to pay the losses and damages, fixing the amount thereof, if the defendant should have requested it in the action.

SECTION II.—*Security of property in litigation.*

ART. 1417. A person who, presenting the documentary evidence of his rights, institutes an action for the ownership of mines, of woodlands, the principal wealth of which consists in the timber, of plantations, or of industrial and manufacturing establishments, may request that judicial intervention be ordered in the administration of the property in litigation.

ART. 1418. After the action referred to in the foregoing article has been instituted, the judge, after ordering a separate record to be made, shall at once cite the parties to appear before him within a

[1] A judgment denying a petition to vacate an attachment is not definite.—*Decisions of December 14, 1885, and January 26, 1886.*

period of nine days. The parties appearing, without making any allegations with regard to their rights in the action, may come to an agreement as to the person to be appointed receiver; should they not be able to reach an agreement, the plaintiff shall designate four persons from which the defendant shall select one, and if he should not do so, the person who pays the highest quota by way of territorial tax shall be appointed.

ART. 1419. Within the twenty-four hours following the appearance, the judge shall render a ruling declaring whether a receivership is or is not necessary, and in a proper case appointing the receiver.

If the intervention is ordered the receiver shall be given immediate possession, the defendant being ordered to abstain from all acts of management of the estate without the previous permission of the receiver.

ART. 1420. Whenever there is a disagreement between the receiver and the defendant with regard to any administrative act which the latter may attempt, the judge shall cite the parties to appear before him and shall decide what he may deem proper after hearing them.

ART. 1421. The defendant at any stage of the action may furnish security in order that the intervention may cease. After the proper petition has been made, the judge shall order that an expert examination of the property be made, for the purpose of fixing its actual value, and to what extent the property may be damaged by an improper management thereof.

In order to make this examination, each party shall, without restriction, select an expert; if there should be a disagreement and neither of the persons interested should request the selection of a third expert, the judge, in accordance with the higher appraisement of the property, shall fix, within the period of three days, the security to be given by the defendant to answer, in a proper case, for the damages which the thing in litigation may suffer during the pendency of the proceedings.

If the selection of a third expert should be requested, it shall be made in accordance with the provisions of articles 615 et seq.

ART. 1422. The security may be of any of the kinds allowed by law, but with regard to any personal or mortgage bond which may be offered, the plaintiff must be heard thereupon, and the evidence which he may offer with regard to the insolvency of the surety or as to the insufficiency of the mortgage, must be admitted in an oral action, as well as such contradictory evidence offered by the defendant as may be pertinent to the matter.

The judge shall render judgment in this action within three days, which judgment may be appealed from for a review as well as for a stay of proceedings.

ART. 1423. A bond in cash or securities shall be constituted by depositing in the public establishment provided therefor the amount which the judge may have fixed.

ART. 1424. After the security has been furnished, the appointment of the receiver shall be canceled and he shall be immediately required to cease in the discharge of his duties.

ART. 1425. Every resolution vacating the intervention or canceling the security furnished shall contain the proper order with regard to costs and indemnification of losses and damages. The provisions of article 1415 shall be observed for the recovery of the latter.

ART. 1426. If any of the documents included in the first three subdivisions of the following article are presented in an action, from which an obligation to do or to abstain from doing something or to deliver specific things is clearly apparent, the judge may, at the instance and under the liability of the plaintiff, adopt the measures which, according to the circumstances, may be necessary to secure the enforcement of the judgment which may be rendered in the action.

If the person requesting said measures is not known to be sufficiently solvent, the judge shall require him to previously furnish security sufficient to answer for the indemnification of any losses and damages which may be suffered.

TITLE XV.

EXECUTORY ACTIONS.[1]

SECTION I.—*Executory process.*

ART. 1427. An executory action must be based upon an act importing a confession of judgment.

The following instruments only import a confession of judgment:

1. A public instrument, provided that it is a first copy, or, if it is a second copy, that it has been issued by virtue of a judicial mandate and with a citation of the person it is to prejudice, or of his predecessor in interest.

2. Any private document which has been acknowledged under oath before the judge competent to issue the execution.

3. The confession made before a competent judge.

4. Bills of exchange, without the necessity of a judicial acknowledgment thereof by an acceptor who did not qualify the acceptance as false at the time of the protest of the bill of exchange for nonpayment.

5. Any commercial paper payable to order or to bearer, representing obligations past due, and the due coupons thereof, provided that said coupons correspond to the bonds, and the latter to the stub books from which they have been detached.

[1] See note to article 164.

ART. 1410. Notwithstanding the provisions of the foregoing article, if the debtor should be included in any of the cases of article 1398, the provisional seizure may also be ordered after the institution of the action, a separate record being made thereof.

The provisions contained in articles 1399 to 1410, inclusive, shall be applicable to this case, and after the attachment has been levied the proceedings thereupon shall be continued as prescribed for incidental issues.

When an attachment is vacated by a final ruling, because it is not included in any of the cases of said article 1398, the plaintiff shall be taxed all the costs and be adjudged to indemnify the defendant for any losses or damages he may have suffered, which shall be recovered in the manner prescribed in article 1415.[1]

ART. 1411. When the provisional seizure becomes of no effect by reason of its having become null *de jure* in accordance with article 1409, the surety shall be ordered cancelled in the same ruling, if any should have been furnished, or what may be proper shall be ordered for vacating the attachment and cancelling the cautionary notice, in a proper case, and all costs shall be taxed against the plaintiff, who shall also be adjudged to indemnify the defendants for any losses and damages he may have incurred.

If the attachment should be vacated for any other reason, the ruling thereupon shall also determine what may be proper according to the cases with regard to cost and the indemnification of losses and damages which may have been suffered.[2]

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defendants would suffer damage to their interests, and the person who commits an injury must not only make good the damages he may have directly caused, but also the injury which may be a consequence of his action, according to law 3, Title XV, Partida 7.—*Decision of April 7, 1868.*

[1] With the exception of the cases referred to in article 1410 of the law of procedure, in which the provisional seizure is requested after the main action has been instituted, the competency to take cognizance of said seizures must be determined by rule 12 of article 63 of the law; that is to say, the judge competent is the one of the place where the property to be attached is situated.—*Decision of March 15, 1887.*

When the attachment treated of in a demand in intervention does not have the character of a provisional seizure, and, furthermore, was not levied for any of the causes specifically mentioned in articles 1410, 1411, and 1416 of the law of civil procedure, said articles can not have been violated, nor can they be cited for the purposes of an appeal for annulment of judgment, and in order for them to be applicable it would be necessary for the creditor to have demanded the attachment of the property, knowing that it was not the property of the debtor, but of a third person.—*Decision of May 27, 1889.*

[2] A decision which denies the ratification of a provisional seizure is not definite for the purposes of an annulment of judgment.—*Decision of January 31, 1884.*

An indemnification for losses and damages is not proper on account of a provisional seizure when the indemnification is requested after the debt has been acknowledged and the proper amount paid, and therefore the annulment of the judgment is not proper on account of the fact that said claim has been denied.—*Decision of March 10, 1885.*

A judgment ordering the raising of a provisional seizure of property is not definite.—*Decision of May 4, 1885.*

ART. 1412. If the acknowledgment of a signature or of the written evidence of a debt should not be made or be delayed through the fault of the debtor, and if the filing of the complaint and the ratification of the attachment should depend thereupon, the time lost in obtaining said acknowledgment shall not be included in the period of time prescribed in article 1409.

ART. 1413. If the owner of the property seized should request it, the attachment creditor must file his complaint within the period of ten days, unless any of the circumstances mentioned in the foregoing article is attendant. Should he not do so, the attachment shall be vacated and the costs, losses, and damages shall be taxed against him.

ART. 1414. After the provisional seizure has been levied, the debtor may object thereto and request that it be vacated, with indemnification of losses and damages, if not included in any of the cases of article 1398.

He may make this petition within the five days following that of the notice of the ruling ratifying the seizure, or before that time, if he should deem it proper, and it shall be heard and determined in a separate record in accordance with the procedure prescribed for incidental issues.[1]

ART. 1415. In cases in which there is an adjudication of losses and damages, as soon as the ruling thereupon becomes final, they shall be recovered according to the procedure established in articles 927 *et seq.*

ART. 1416. In the case of the second paragraph of article 1395, the municipal judge shall order the provisional seizure, if he deems it proper, at the time of issuing the citation for the oral action, and shall ratify or vacate it in the judgment, according as to whether he renders judgment for or against the defendant.

If he renders judgment for the defendant, all the costs shall be taxed against the plaintiff.

He shall also adjudge him to pay the losses and damages, fixing the amount thereof, if the defendant should have requested it in the action.

SECTION II.—*Security of property in litigation.*

ART. 1417. A person who, presenting the documentary evidence of his rights, institutes an action for the ownership of mines, of woodlands, the principal wealth of which consists in the timber, of plantations, or of industrial and manufacturing establishments, may request that judicial intervention be ordered in the administration of the property in litigation.

ART. 1418. After the action referred to in the foregoing article has been instituted, the judge, after ordering a separate record to be made, shall at once cite the parties to appear before him within a

[1] A judgment denying a petition to vacate an attachment is not definite.—*Decisions of December 14, 1885, and January 26, 1886.*

ART. 1458. If the domicile or whereabouts of the debtor is unknown, notice of the order of sale shall be served upon him by means of edicts, in the manner prescribed in article 269, and he shall be granted a period of nine days to enter an appearance in the proceedings and oppose the execution should he care to do so.

The statement shall be made in the edicts that the attachment was made without a previous demand for payment because the whereabouts of the debtor was unknown.

ART. 1459. Within the period of three legal days, which period can not be extended, to be counted from that following the citation made in any of the forms referred to in article 1457, the debtor may object to the execution, having his appearance entered through a solicitor.

ART. 1460. After the period fixed for the respective cases in the two preceding articles has elapsed without the defendant entering an appearance in the action, he shall, at the instance of the plaintiff, be declared in default, and the proceedings shall follow their course without the defendant being again cited or any other notices being served upon him except those prescribed by law.

At the same time the judge shall order the record to be brought before him for judgment, with a citation of the plaintiff only.

ART. 1461. If the debtor should object at the proper time and in the proper manner, his opposition shall be admitted and he shall be ordered to perfect it within a period of four days, which can not be extended, pleading the exceptions and submitting the evidence which he may consider proper, for which purpose the provisions of article 519 shall be observed.

Upon serving notice of this order on the solicitor of the execution debtor cited by edicts, the copies of the complaint and of the documents shall also be served upon him.

If the four days should elapse without the opposition being perfected, the judge shall order the record brought before him and cite the parties for judgment, without the necessity of a motion therefor from the plaintiff.[1]

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[1] This article is not violated if no evidence is taken in the second instance when the debtor upon whom the order of sale has been served has not opposed the execution, in accordance with the provisions of this and of the preceding article.—*Decision of October 1, 1884.*

After the period prescribed in this article has elapsed neither an exception taken to the lack of personal capacity on the part of the execution creditor nor the other exceptions mentioned in the following article can be admitted by the judge.—*Decisions of April 6, 1887, April 12 and November 19, 1888.*

The pleading of exceptions and the submission of evidence do not belong to different and successive proceedings in an executory action, but there is a unity between them, according to this article of the law of procedure. Therefore a consequence of this unity is that when the right for one is lost so is also the right for the other; and such is the case when, the period fixed within which to make an opposition having elapsed, the judgment creditor requests that the debtor be declared in default.—*Decision of November 10, 1879.*

ART. 1462. The following exceptions only shall be admissible in an executory action:

1. Falsity of the title importing a confession of judgment, or of the act which gave the title this character.

2. Payment.

3. Compensation of a net credit appearing in a document importing a confession of judgment.

4. Prescription.

5. Composition or respite.

6. Promise or agreement to waive demand of payment.

7. Lack of personal capacity on the part of the execution creditor or his solicitor.

8. Novation.

9. Compromise.

10. An agreement to submit the matter for decision to arbitrators or to amicable compounders, executed with the formalities prescribed by this law.

11. Lack of competent jurisdiction.

Any other exception which the debtor may plead shall be reserved for a declaratory action, and it shall not prevent the rendition of a judgment of sale.[1]

ART. 1463. In executory actions based upon bills of exchange, the only exceptions admissible shall be those mentioned in the first five

[1] With regard to the prescription of actions arising from commercial obligations, see Title II of Book IV of the Code of Commerce in force (articles 942 to 954), in which are included all the provisions which in the Code of 1829 were scattered among Titles XII of Book II and V of Book III. The modifications and additions made are of some importance.

With regard to the contents of number 5, article 524 of the said Code states: "The amount which a creditor remits or releases a debtor against whom an action has been brought for the payment or reimbursement of a bill of exchange shall be understood as extended also to the rest who may be liable for the effects of the collection."

With regard to compensation the Supreme Court has declared: In order that a credit may be set off with another, it is necessary that it be net or fixed; in a decision of June 18, 1869, that in order that compensation may take place it is an essential requisite among others that the debt which it is desired to set off be specific and fixed; in that of March 17, 1873, that compensation is proper only among debts which are net and specific, and the certainty of which must be proven within a period of ten days; from which it may be clearly deduced that the truth of a debt which can be set off must be easily and immediately decided.—*Decision of December 17, 1864.*

The exceptions pleaded by the defendant must be proven by him, and it is the duty of the adjudging chamber to consider whether they have or have not been proven.—*Decision of January 30, 1885.*

The lack of personality on the part of the plaintiff or his solicitor can not be pleaded except at the moment opposition is made to the execution.—*Decision of April 6, 1887.*

subdivisions of the foregoing article, the last to be proven by a public instrument or by a private document acknowledged in court, and in addition the exception of the caducity of the bill of exchange.[1]

ART. 1464. The defendant may also base his opposition to the execution on the grounds that the amount claimed in the complaint or the computation in cash of debts payable in kind is excessive.

ART. 1465. The defendant may also request that the action be declared void, on the following grounds:

1. When the obligation or the title by virtue of which the execution may have been issued is void.

2. When the title should not be one importing a confession of judgment (*fuerza ejecutiva*), either on account of external defects, or because it is not yet due, or because it is not actionable, or the amount is not a specific sum.

3. When the debtor has not been served with the notice of sale, with the formalities prescribed by law.

4. When the execution debtor should lack the personal or representative capacity under which he is sued.

ART. 1466. The written objection of the execution debtor shall be referred to the plaintiff for a period of four days, and the record of the case shall be delivered to him for the purpose of enabling him to answer and to submit such testimony as he may deem proper.

A copy of the answer shall be attached for delivery to the defendant.

After the four days have elapsed, the record shall be recovered without the necessity of compulsory process, the procedure established in article 308 being employed.[2]

ART. 1467. After the answer has been presented or the record recovered without the same, the judge shall admit evidence for a period of ten days, common for both parties, if either of the parties should have requested it.

During these ten days the evidence submitted by either party shall be taken, if the judge deems it pertinent, the provisions established in section V of the procedure for ordinary actions of greater import being observed therein.[3]

ART. 1468. The period for the taking of evidence can not be extended nor suspended except with the consent of both parties, or if the judge

[1] The new Code of Commerce, instead of introducing any innovations on this point, confirms the provisions of this law, stating in article 523 that: "Against an executory action based on bills of exchange no other exceptions shall be admitted but those mentioned in the Law of Civil Procedure."

[2] An exception pleading a lack of personal capacity on the part of the execution creditor is not admissible when the executory action is based on a bill of exchange.—*Decision of October 25, 1888.*

[3] The submission of evidence after the expiration of the ten days prescribed therefor is not admissible on appeal.—*Decision of December 12, 1865.*

should deem it necessary for the reason that all or part of said evidence must be taken at a place other than where the action is pending. In such case he shall order that the period for the taking of evidence be extended the number of days it takes the mail to reach the town where the evidence is to be taken.

ART. 1469. After the period for the taking of evidence has expired, the judge shall order, without the necessity of a request therefor being made, that the evidence taken be attached to the record and that said record be placed in the clerk's office for the examination of the parties, for the period of four days, which shall be common for all of them.

ART. 1470. Upon the expiration of the said four days, the judge shall order the record brought before him with a citation of the parties for judgment.

He shall issue a similar order, when no evidence is to be taken, and shall further order that a copy of the petition of the plaintiff be delivered to the defendant.

If before the expiration of the day following the service of the notice of these orders, any of the parties should request it, he shall fix a day within the next six days for the hearing.[1]

ART. 1471. Within three days after the hearing, or within five days if no hearing is had, the judge shall render judgment, which shall contain one of the three following decisions:

1. That the execution be enforced, stating the amount to be paid to the debtor.

2. Refusing to issue an order for sale.

3. Declaring the nullity of the entire proceedings, or part thereof. In the latter case the proceedings shall be returned to the state in which they were when the error was committed.

He shall also make such declarations as may be proper with regard to the exceptions pleaded, and if an exception to the jurisdiction should

[1] The defendant may raise a question of jurisdiction by interposing an inhibitory or declinatory plea, when payment is demanded of him and when the order of sale is served upon him and he opposes the execution, and should he not take this action he impliedly submits to the jurisdiction of the judge taking cognizance of the proceedings.—*Decision of February 20, 1861.*

In an executory action the service of the order of sale is equivalent to the summons in the ordinary action, and the omission thereof renders the proceedings null and void. Should there be more than one debtor, all of them must be cited and summoned, under the penalty of nullity.—*Decision of June 20, 1866.*

A hearing without a day being previously fixed therefor is equivalent to the non-citation of the execution debtor for judgment.—*Decision of November 29, 1866.*

When an executory action against an association is in question, payment must be demanded, and the order for the sale must be served upon the attorneys of the same.—*Decision of May 23, 1883.*

have been pleaded and he deems it well taken, he shall abstain from passing upon the others.[1]

ART. 1472. In the first case of the foregoing article the costs shall be taxed against the execution debtor, unless he has successfully pleaded any of the exceptions mentioned in article 1464, and shall have deposited at the time of the pleading thereof the amount of the indebtedness.

In the second case the costs shall be taxed against the plaintiff.

In the third case each party shall pay his own costs, unless there should be reason to tax them against one of the parties on account of his having proceeded upon insufficient grounds; or, by way of correction, against the official responsible for the annulment of the proceedings.[2]

ART. 1473. In case of an appeal the appellate court shall impose the costs, by way of a disciplinary correction, upon the judge who, in violation of law and on account of an inexcusable error, in the opinion of the court, should have improperly ordered the execution, or should have denied it when it was proper.

ART. 1474. Whatever be the judgment rendered, it may be appealed from for review and for a stay of proceedings.

If the judgment should order a judicial sale, referred to in subdivision 1 of article 1471, it shall be executed by compulsory process, notwithstanding the appeal, if the plaintiff should so request and give security to answer for all that he may receive in case he should be required to return the same on account of a reversal of judgment.

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[1] A decision ordering that the execution be enforced must be fulfilled at once.—*Decision of November 30, 1865.*

A ruling refusing to order the raising of an attachment made in an executory action is not final nor does it put an end to the proceedings making its continuation impossible.—*Decision of March 28, 1868.*

An appeal for annulment of judgment does not lie against decisions rendered in executory actions, and the proceedings to enforce an order for sale are nothing but a complement of the executory action, which is not concluded until the creditor is paid.—*Decision of March 18, 1872.*

An order for sale obtained by a creditor upon whom, according to article 510 of the law of procedure, the resolution of a meeting of creditors is not binding, does not determine a special preference of the credit, and therefore the creditor who obtains said order does not separate himself from the insolvency proceedings.—*Decision of March 26, 1884.*

[2] Article 971 of the former law of procedure prescribed that the costs should be taxed against the judge or official who was responsible for the annulment of the proceedings, and it had been established that such liability did not comprise those officials who only took part in the preliminary proceedings of the annulled action.—*Decision of May 5, 1879.* At the present time the costs may be taxed against the judge as a disciplinary correction, in accordance with the provisions of this law as contained in articles 450 and 1475.

The costs imposed in an executory action are subject to what may subsequently be decided in the ordinary action.—*Decision of June 4, 1884.*

ART. 1454. If, during the executory action and before an order for sale is issued, any installment of the obligation involved should fall due, the execution may be increased so as to include the amount of said instalment if the plaintiff should so request, without the necessity of retrogression in the action, and the proceedings already taken shall be considered as applying to the increased execution.

The order of sale shall also be changed so as to include the additional installments claimed.

ART. 1455. The other instalments of the same obligation which should fall due after the order for the sale has been issued may be claimed by new complaints in the same executory action.

In such cases, after the new complaint has been presented, the judge shall order the record brought before him, with a citation of the parties, ordering a copy of the former to be delivered to the debtor; if the debtor should not object within the three days following, judgment shall be rendered without further proceedings, and it shall be ordered that the order of sale include the new instalments which have become due and claimed, with regard to which the execution shall also be prosecuted.

ART. 1456. If the debtor should object within the period mentioned, his opposition shall be heard and determined in accordance with the provisions of articles 1461 *et seq.*, without suspending the compulsory process with regard to the previous instalments, when it is so requested by the plaintiff, for which a separate record shall be made if necessary.

ART. 1457. After the attachment has been levied, when the domicile of the debtor is known he shall be notified by writ, in the manner prescribed for the respective cases by articles 270 *et seq.*, that the sale of the property attached has been ordered.

With the writ of citation there shall be delivered to the defendant the copies of the complaint and documents which the execution creditor may have presented, the fact of said delivery being entered upon the memorandum of service.[1]

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[1] Notice that the sale of the property attached has been ordered can not be served upon a person who has not been a party to the proceedings.—*Decision of October 13, 1864.*

In executory actions the service of the order of sale is equivalent to the summons in ordinary actions.—*Decisions of April 24 and May 18, 1869, February 7, 1878, and May 27, 1880.*

The provisions of this article do not signify that in order to be valid the attachment and the order for the sale in executory actions must be made in the same act, but they order only that after the attachment has been made the debtor be cited for the purpose indicated, in the legal manner prescribed.—*Decision of February 10, 1876.*

After the order of sale has been duly served in an executory action, it produces all its effects against all those who subsequently appear in representation of the rights and obligations of the execution debtor, and therefore a judgment to this effect does not violate any form of procedure nor the principle of law that no one can be condemned in an action without being heard.—*Decision of April 29, 1879.*

The court clerk who does not cite the debtor in the manner prescribed in this article incurs the liability mentioned in article 280.—*Decision of April 18, 1885.*

ART. 1478. No other issues can be raised in executory actions than those based upon questions of jurisdiction or from consolidation with universal proceedings.

Questions of competency can not be raised after the debtor has objected to the execution.

Consolidation can take place until the creditor is paid, reserving the provisions contained in articles 165 and 166.[1]

SECTION II.—*Compulsory process.*

ART. 1479. After the order for the judicial sale has been made and affirmed by the audiencia, or after the security has been given in case the fulfillment thereof is requested when an appeal has been taken, payment of principal and costs shall be made at once, after a taxation of the latter, if the property attached be money, salaries, pensions, or credits which may immediately be realized upon.[2]

ART. 1480. If the property attached be negotiable commercial paper or certificates payable to bearer, issued by the Government or by properly authorized associations, the sale thereof shall be made by the agent or broker which the judge may designate, a memorandum of the transaction, together with a certificate of the person making the sale to the effect that it was made at the current exchange of the day of the sale, being attached to the record.

With regard to securities quoted on exchange, the judge must appoint an agent thereof to make the sale, and where there is none, a commercial broker.

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Only in case that real property or jewelry of considerable value is to be appraised, may the judge, if he considers it advisable, appoint another expert, of his own selection, to make the appraisal together with the other expert.

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This expert may be challenged in accordance with the provisions of articles 618 *et seq.*

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If jewels of great value are in question, the judge may furthermore order that the edicts be published in the *Gaceta* of the General Government.[1]

ART. 1487. If the property attached should come under the head of real property, there shall be ordered before the appraisement thereof:

1. That an order be issued to the register of property to prepare and forward to the court a certificate of the mortgages, annuities (*censos*), and encumbrances upon said property or to the effect that the property is unencumbered.

[1] When among the property of the defendant which has been attached there are credits, these may be collected judicially without the necessity of a previous cession or transfer made by the former in favor of the judgment creditor, because otherwise the attachments would be illusory, as well as any other proceedings of the executory action.—*Decision of November 24, 1877.*

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2. That the debtor be required to present in the office of the clerk the titles of ownership to the property within six days.[1]

ART. 1488. If it should appear from the certificate of the register that the property is encumbered with second or subsequent uncancelled mortgages, the mortgagees shall be informed of the execution in order that they may intervene in the appraisement and sale of the property, should they desire so to do.

ART. 1489. After the notice mentioned in the foregoing article has been served, the compulsory process shall continue without further notice to the mortgagees.

If the latter should enter their appearance before the appraisement, either in person or through a solicitor, they shall have the right to appoint at their own cost an expert to appraise, with the experts appointed by the defendant and by the plaintiff, the value of the mortgaged estate or estates.

In such case they shall also be notified of the order fixing the day for the public sale.

ART. 1490. After the titles have been presented by the debtor, a separate branch of the record shall be formed with the same, and the plaintiff shall be informed thereof, in order that he may state whether he deems them sufficient or indicate the correction of the errors he may find therein.

ART. 1491. If the debtor should not have presented the titles within the period fixed in subdivision 2 of article 1487, the judge may judicially compel him to present the same, or order that a certificate be issued of the entries in the registry of property relating thereto, and true copies of the respective instruments, in a proper case.

If no results should be obtained from these proceedings, or if no titles of ownership should exist, the absence thereof may be supplied by the means established in title 14 of the mortgage law.

All these steps shall be taken at the instance of the execution creditor and at the expense of the debtor.[2]

ART. 1492. During the performance of the proceedings mentioned in the foregoing article, and after the prescriptions of article 1488 have been observed, in a proper case, the property shall be appraised in the manner established in articles 1481 *et seq.*, if the creditor should so request.

If there should be three experts on account of the subsequent mortgagees having made use of the right granted them by article 1489, the appraisement shall be determined by a majority vote of the experts.

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[1] According to the royal order of May 11, 1888, in order that the provisions of this article may be considered as complied with, it is necessary that there should be included in the record an abstract covering the entire period of the existence of the registry relating to the freedom from encumbrances of the property attached, or specifying the charges thereon.

[2] The provisions of the title mentioned of the mortgage law are applicable only to property or rights acquired before January 1, 1863.

ART. 1493. After the appraisement has been made, and when, in the judgment of the plaintiff, the titles of property are sufficient, or the lack thereof has been supplied in any possible manner, the property shall be offered at public auction for a period of twenty days, in the manner prescribed in article 1486.

In such case the edicts shall also be published in the *Gaceta* of the general government, if the judge should deem it advisable in view of the value of the property, and in every case in the official bulletin of the province, where there is one.

ART. 1494. There shall also be stated in the edicts that the titles of ownership of the property will be kept in the office of the clerk subject to the examination of the persons who desire to bid at the sale and that the bidders must accept said titles, and that they shall not have the right to demand others.

After the sale no claim of the purchaser relating to the insufficiency of or defects in the titles shall be entertained.

ART. 1495. At the instance of the creditors the property may be sold at public auction without previously supplying the lack of evidences of title, which circumstance shall be stated in the edicts.

In such case the provisions contained in rule 5 of articles 136 and 139 of the regulations for the execution of the mortgage law of Cuba or Porto Rico shall be observed.

ART. 1496. Before the sale takes place, the debtor may release his property from the execution by paying the principal and costs. After the sale it shall become irrevocable.

ART. 1497. At the sale of personal and real property no bids shall be accepted which do not amount to at least two-thirds of the appraised value.

Bids may be offered and received on behalf of a third person.

ART. 1498. In order to take part in the auction the bidders must previously deposit with the court, or with the establishment provided for the purpose, an amount equal to at least 10 per cent of the appraised value of the property, without which requisite they shall not be admitted.

Said deposits shall be returned to their respective owners immediately after the sale, excepting the amount deposited by the successful bidder, which shall remain on deposit as a guaranty that he will comply with the terms of the sale and, in a proper case, it shall be applied to the purchase price.

ART. 1499. The execution creditor may bid at the sale and increase the bids without requiring him to make the deposit mentioned in the foregoing article.

ART. 1500. If the property should be real property, situate beyond the judicial district where the proceedings are being held, the sale may be held simultaneously in both courts, at the instance of any of the parties, which circumstance shall be stated in the edicts.

The judge may also order the double and simultaneous sale, even though none of the parties sould have requested it, when, in his judgment, it be necessary in view of the value or special conditions of the property.

ART. 1501. The judge, assisted by the clerk and by the subordinate official who is to announce the sale to the public, shall preside at the same. The proceedings shall begin with the reading of a description of the property and the conditions of the sale. The bids shall be publicly offered and the sale shall be closed by the judge when he considers it proper and when no higher bids are received.

Immediately thereafter the amount offered and the name of the successful bidder shall be announced to the public, and the agreement and acceptance of the purchaser shall be entered upon the minutes, which shall be signed by the judge, the clerk and the subordinate official, and by the parties, if present.

ART. 1502. Should there be no bidder, the execution creditor shall have the option of requesting that the property be awarded to him for two-thirds its appraised value, or that it be again offered at public auction, based upon a reduction of 25 per cent of the appraised value.

The second sale shall be announced and held in the same manner as the first one.[1]

ART. 1503. Should there be no bidders at the second sale, the plaintiff may require either that the property be sold to him at two-thirds of the price which may have served as a basis for the second sale, or that he be entrusted with the management thereof for the purpose of applying the profits to the payment of the interest and of the principal obligation.

In such case the judicial administration which may have been instituted in accordance with the provisions of article 1448 shall cease.[2]

ART. 1504. If the plaintiff does not agree to either of the two measures mentioned in the foregoing article he may request that a third auction be held without fixing the minimum bid to be accepted.

In such case, if there should be a bidder offering two-thirds of the price which served as a basis for the second auction, and who accepts the conditions of the sale, the said sale shall be approved.

If a bid of less than said two-thirds should be offered, the approval of

[1] The award of property in favor of the execution creditor may be entered in the registry of property without the necessity of a public instrument by virtue of a judicial mandate including the award, as article 1514 of the law of procedure only prescribes the requisite of an instrument for the judicial sale at public auction and not for the award; but the fact that a public instrument has been executed for the purpose of making the award is not, however, an obstacle to its inscription, as the deed is an instrument which can be recorded.—*Decision of the director-general of registers of property and notaries public of June 30, 1879.*

[2] Orders for sale and the other orders issued for the fulfillment theerof are not final.—*Decision of July 12, 1878.*

the sale shall be held in abeyance, and the debtor shall be informed of the price offered, who, within the next nine days, may pay the creditor and have his property released, or may procure some person to increase the bid, making the deposit prescribed in article 1498.

After the nine days have elapsed without the debtor either having paid or increased the bid, the sale shall be approved and ordered consummated.

ART. 1505. If a higher bid should be offered within the period mentioned, the judge shall order the two bidders to appear before him at a day and hour fixed and to compete in their bidding, and he shall award the property to the person making the most advantageous proposition.

If the first bidder, in view of the higher bid made by the second, should state that he yields the estate, the proceeding prescribed in the foregoing paragraph shall not be observed.

ART. 1506. If at the third sale a bid should be offered which is acceptable in so far as the price is concerned, but offering payments in installments or changing some other condition, the creditor shall be informed thereof, and shall be permitted within the next nine days to request the award of the property in accordance with the provisions of article 1503, and if he should not make use of this right the sale shall be approved in accordance with the terms offered by the bidder.

ART. 1507. With the exception of the cases referred to in the three preceding articles, if a sale is made at any of the auctions, it shall at once be approved by the judge, who shall order, if the property should be personal or live stock, that it be delivered to the purchaser upon the payment of the purchase price within three days.

For said purpose, the proper order shall be given to the depositary and an entry shall be made upon the record of the payment of the purchase price and the delivery of the property, a receipt for which the purchaser shall be required to sign.

ART. 1508. If the property should be real property, the sale thereof shall be approved at once. If a double sale should have taken place, it shall be awarded to the highest bidder as soon as the proceedings held for the sale in the other court are received.

If the two bids should be equal, the two persons offering them shall appear before the judge taking cognizance of the proceedings, and compete for the property, for which purpose said judge shall fix a day and hour, and shall award the property to the one offering the higher price, returning to the other the deposit he may have made.[1]

[1] The proceedings to carry out an order for sale are only supplementary to the executory action, which is not terminated until payment is made, as has been declared by the Supreme Court, and the right of the debtor as well as of the creditor to institute an ordinary action remains unimpaired.—*Decision of May 28, 1879.*

ART. 1509. After the sale has been approved, the court clerk shall liquidate the incumbrances upon the real property sold, deducting from the price the capital of the annuities and of other perpetual charges only.

This liquidation shall be referred for three days to each of the parties and to the purchaser, and in view of their statements the judge shall approve the same without further proceedings, or shall order that the proper corrections be made.

ART. 1510. In the same order by which the liquidation of the charges is approved, the purchaser shall be ordered to deposit the amount appearing from the liquidation within a brief period, not to exceed eight days.

ART. 1511. If the purchaser should not deposit the price within the period fixed, or the sale should not be consummated, through some reason attributable to him, a new sale shall be held, and said purchaser shall be liable for the reduction in the amount received at such new sale and for the costs which may be incurred on this account.

ART. 1512. After the price has been deposited, the defendant shall be required to execute within three days the proper deed of sale in favor of the purchaser.

Should he not do so, or should he be prevented from executing the deed on account of his absence, his default, or for any other reason whatsoever, the judge shall execute said deed *ex officio*.

ART. 1513. After the deed has been executed there shall be delivered to the purchaser the titles of ownership, and the property shall be placed at his disposal, the necessary orders being given for the purpose.

If the purchaser should so request, he shall be introduced as the owner of the property to such persons as he may designate, or he shall be placed in possession thereof.[1]

ART. 1514. If the execution should have been issued at the instance of a second or third mortgage creditor, the amount of the preferred mortgage credits for which the estate sold is liable shall be deposited in the establishment provided therefor, and the balance shall be delivered without delay to the execution creditor, if the same should not exceed or be less than the amount of his credit.

If it should exceed the amount of his credit he shall be given the principal and interest, and after the taxation of costs has been made and approved, as well as the proper liquidation, he shall be paid the balance to which he may be entitled.[2]

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[1] The sale of an estate made judicially for the purpose of satisfying a credit secured by the same, annuls *de jure* the other mortgage records which also encumbered it, and the estate is released from these encumbrances for the purchaser, and articles 105, 133, 146, and 156 of the mortgage law cannot be successfully pleaded thereagainst.—*Decision of December 6, 1876.*

[2] An executory action having been instituted at the instance of a mortgage creditor, and the estates of the debtor having been sold at the instance of the purchaser of the

ART. 1515. If the execution should have been issued by virtue of instruments payable to bearer secured by a mortgage recorded against the estate sold, and if there are other similar instruments outstanding, the net amount received at the sale shall be distributed pro rata among all of them, the execution creditor receiving his share, and the portions pertaining to the other holders shall be deposited until their titles are cancelled, for which purpose the procedure established in article 82 of the mortgage law may be employed.[1]

ART. 1516. In the cases mentioned in the two preceding articles, the records of the mortgages to which the estate is subject shall be cancelled at the instance of the purchaser, for which purpose an order shall be issued stating that the proceeds from the sale were not sufficient to cover the claim of the execution creditor and, in a proper case, that the amount of the claim of the preferred creditor has been deposited, or the balance, should there be any, at the disposal of the persons interested.

ART. 1517. If the estate should have been awarded to the execution creditor in payment of his claim, it shall be understood as having been made without prejudice to prior mortgages, and also to subsequent ones if the proceeds from the sale should be sufficient to satisfy them. Should the proceeds not be sufficient therefor, the record of the last ones may be cancelled, in accordance with the provisions contained in the foregoing article.

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property subject to the execution, which estates are charged with other prior mortgage liabilities, and if the amount of these preferred credits should be deposited, the records relating to the same may be cancelled without further proceedings, provided that the deposit is made in the establishment provided for the purpose, which can not be made in the office of the court clerk. By such cancellation the preferred creditors who do not enjoy, according to law, the right to intervene in the compulsory process, can not be injured, because it must be taken into consideration that the last creditors may perhaps have to be satisfied with a reduction in their claims, and on the contrary, articles 1516 and 1518, in so far as they relate to the preferred creditors, start from the supposition that the amount of their credit has been deposited in full. Neither are there grounds to plead, for the purpose of refusing to make such cancellation, that the said article repeals and annuls article 105 and others of the mortgage law, because if the object of every mortgage is to insure to the creditor that his claim will be paid, this object is attained by depositing the proper amount in the care of a court and at the disposal of the legitimate owner.—*Decision of the Director-General of Registries, of May 9, 1890.*

[1] The provisions of article 82 of the mortgage law, relating to the procedure, are as follows:

"Records made to account for sums represented by instruments executed to bearer can not be cancelled if the extinction of all the secured obligations can not be proven, unless a copy of the judicial decree declaring the extinction of said obligations is presented.

"In the case mentioned in the preceding paragraph, in order to issue the judicial decree, four calls of those having a right to oppose the cancellation must be made by means of public notices and advertisements in the official newspapers, each one for the period of six months."

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ART. 1518. Unless the principal and interest of the claim of the execution creditor, together with all the costs of the execution, are satisfied in full, the proceeds of the sale can not be applied to any claims other than those which have been declared preferred by a final judgment, reserving the provisions contained in articles 1514 and 1515.

In no case shall the costs incurred by the defense in an executory action be preferred.[1]

ART. 1519. If, in accordance with the provisions of article 1503, the creditor should request that the administration of the property attached be entrusted to him, the judge shall order that it be delivered to him according to the proper inventory, and that he be presented as such to the persons which the creditor himself may designate, a statement of which shall be entered upon the record.

ART. 1520. The creditor and the debtor may by private agreements establish the conditions under which the former is to administer the property attached, and the manner in which and periods when he is to render an account of his administration.

Should they not make such agreements, it shall be taken for granted that the property is to be managed according to the customs of the country, and that the creditor is to render yearly accounts of his administration.

In such case, if the property involved be rural, the debtor may intervene in the harvesting of the crops, in person or through a duly empowered representative.

ART. 1521. The account submitted by the creditor shall be referred to the debtor for a period of fifteen days, and a copy of such corrections as the latter may make shall be delivered to the creditor in order that he may state within a period of nine days whether he does or does not agree thereto.

ART. 1522. Should he not agree to the account, the judge shall cite him, together with the defendant, to appear at an oral hearing within three days, at which hearing the pertinent evidence submitted shall be admitted. A reasonable period shall be fixed by the judge, not to exceed ten days, for the purpose of taking the evidence.

The proper minutes of such evidence shall be made, and the documents which may be presented by the parties shall be attached to the record.

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[1] The provisions of this article to the effect that the costs incurred in the defense of the debtor in an executory action shall in no case be preferred is a declaration for a special case, which does not establish a general rule contrary to law, because the construction of the law does not permit such an interpretation, for when it desired to establish the preference of the costs this was done in article 1266, relating to the cost of taking the inventory and that of the judicial proceedings in testamentary and intestate successions, or it provided for the effectiveness of the preference in article 1228, in which it ordered that the trustees should be provided with funds from the estate to meet the expenses incurred in connection therewith.—*Decision of March 5, 1874.*

ART. 1523. After the period for the taking of evidence has expired, the judge shall render a decision on or before the fifth day, in which he shall decide what may be proper upon the approval or correction of the account presented by the creditor.

This decision may be appealed from for review and for a stay of proceedings.

ART. 1524. All other questions which may arise between the creditor and the execution debtor in regard to the administration of the property attached shall be heard and determined in accordance with the procedure established for incidental issues.

ART. 1525. As soon as the proceeds from the property are sufficient to satisfy the claim of the creditor and the interest thereon, together with the costs, the management and possession of said property shall revest in the debtor.

ART. 1526. The execution debtor may at any time pay the balance due upon his debt, according to the last account presented by the creditor, in which case the debtor shall be immediately vested with the possession of his property and the latter shall be relieved from the administration thereof, without prejudice to rendering a general account within the following fifteen days, or to the claims to which either may believe himself entitled.

ART. 1527. The creditor may resign from the administration of the property at any time he deems proper, and request that it be again offered at public sale, based upon a reduction of 25 per cent of its appraised value, and if there should be no bidder, that it be awarded to him at two-thirds of said value in so far as necessary to satisfy his claim, after deducting the amounts he may have received on account.

ART. 1528. If the execution has been issued against property specially mortgaged, and there should be an express stipulation in the contract to the effect that the creditor may take charge of the administration of the property until the sale thereof takes place, the plaintiff may request that he be placed in possession of the said property.

The judge shall grant this petition, without a hearing of the debtor, if said clause is contained in the mortgage or in another additional instrument, without prejudice to continuing the executory action at the instance of the creditor.

The provisions of articles 1519 *et seq.* shall apply to this case.

ART. 1529. All the appeals which may be proper during the course of the proceedings for judicial compulsion in executory actions shall be allowed for a review of proceedings only.

The incidental issues mentioned in article 1524 shall not be included in these provisions, nor such other incidental issues which are heard and determined in a separate record, or which have no reference to the sale of the property or to the payment of the creditor.

ART. 1478. No other issues can be raised in executory actions than those based upon questions of jurisdiction or from consolidation with universal proceedings.

Questions of competency can not be raised after the debtor nas objected to the execution.

Consolidation can take place until the creditor is paid, reserving the provisions contained in articles 165 and 166.[1]

SECTION II.—*Compulsory process.*

ART. 1479. After the order for the judicial sale has been made and affirmed by the audiencia, or after the security has been given in case the fulfillment thereof is requested when an appeal has been taken, payment of principal and costs shall be made at once, after a taxation of the latter, if the property attached be money, salaries, pensions, or credits which may immediately be realized upon.[2]

ART. 1480. If the property attached be negotiable commercial paper or certificates payable to bearer, issued by the Government or by properly authorized associations, the sale thereof shall be made by the agent or broker which the judge may designate, a memorandum of the transaction, together with a certificate of the person making the sale to the effect that it was made at the current exchange of the day of the sale, being attached to the record.

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If jewels of great value are in question, the judge may furthermore order that the edicts be published in the *Gaceta* of the General Government.[1]

ART. 1487. If the property attached should come under the head of real property, there shall be ordered before the appraisement thereof:

1. That an order be issued to the register of property to prepare and forward to the court a certificate of the mortgages, annuities (*censos*), and encumbrances upon said property or to the effect that the property is unencumbered.

[1] When among the property of the defendant which has been attached there are credits, these may be collected judicially without the necessity of a previous cession or transfer made by the former in favor of the judgment creditor, because otherwise the attachments would be illusory, as well as any other proceedings of the executory action.—*Decision of November 24, 1877.*

ART. 1478. No other issues can be raised in executory actions than those based upon questions of jurisdiction or from consolidation with universal proceedings.

Questions of competency can not be raised after the debtor nas objected to the execution.

Consolidation can take place until the creditor is paid, reserving the provisions contained in articles 165 and 166.[1]

SECTION II.—*Compulsory process.*

ART. 1479. After the order for the judicial sale has been made and affirmed by the audiencia, or after the security has been given in case the fulfillment thereof is requested when an appeal has been taken, payment of principal and costs shall be made at once, after a taxation of the latter, if the property attached be money, salaries, pensions, or credits which may immediately be realized upon.[2]

ART. 1480. If the property attached be negotiable commercial paper or certificates payable to bearer, issued by the Government or by properly authorized associations, the sale thereof shall be made by the agent or broker which the judge may designate, a memorandum of the transaction, together with a certificate of the person making the sale to the effect that it was made at the current exchange of the day of the sale, being attached to the record.

With regard to securities quoted on exchange, the judge must appoint an agent thereof to make the sale, and where there is none, a commercial broker.

ART. 1481. If the property attached should be personal property, it shall be appraised by experts appointed by the parties, and a third one appointed by the judge, in a proper case, unless the persons interested should have fixed in the contract the minimum bid to be accepted at the sale.[3]

ART. 1482. The defendant, who is not included in the provisions of the following article, shall be informed of the appointment of the expert made by the plaintiff, and he shall be required to appoint one also within two days, under the admonition that his failure to do so shall be considered as an agreement on his part to the expert appointed by the former.

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[1] With regard to the consolidation of executory actions in which mortgaged property is involved, see article 133 of the Mortgage Law.

No appeal for annulment of judgment is allowed in executory actions, and therefore neither in issues incidental thereto.—*Decisions of September 26 and October 10, 1884.*

[2] The proceedings for judicial compulsion in an executory action are supplemental thereto.—*Decision of September 9, 1872.*

[3] See articles 36 *et seq.* of the regulations for the organization and government of commercial exchanges, and, in book 1 of the code in force, the provisions relating to commercial brokers.

If the execution debtor should make the appointment upon being notified, the court clerk shall make a memorandum thereof upon the notice.

If the expert appointed by the debtor should not accept the appointment, or should resign before having performed his duty, the latter shall be required to appoint another in the same manner. If the second appointment should also be of a person who does not accept the same, or who resigns, the provisions of the following articles shall be observed.

ART. 1483. If the judgment debtor whose domicile is unknown should have been declared in default in accordance with the provisions of article 1460, the appraisement shall be made by the expert appointed by the plaintiff.

Only in case that real property or jewelry of considerable value is to be appraised, may the judge, if he considers it advisable, appoint another expert, of his own selection, to make the appraisal together with the other expert.

ART. 1484. In case of disagreement the appointment of the third expert shall be made in the manner prescribed in article 616.

This expert may be challenged in accordance with the provisions of articles 618 *et seq.*

ART. 1485. The provisions contained in articles 617, 626 and 628 shall also be applicable to these cases.

ART. 1486. After the property has been appraised public bids shall be received thereon for a period of eight days, if said property should consist of products, live stock, or personal property, or for twenty days, if the property should consist of jewels of great value, edicts being posted in the customary public places and inserted in the newspapers, should there be any, stating the day, hour, and place where the sale is to be held.

If jewels of great value are in question, the judge may furthermore order that the edicts be published in the *Gaceta* of the General Government.[1]

ART. 1487. If the property attached should come under the head of real property, there shall be ordered before the appraisement thereof:

1. That an order be issued to the register of property to prepare and forward to the court a certificate of the mortgages, annuities (*censos*), and encumbrances upon said property or to the effect that the property is unencumbered.

[1] When among the property of the defendant which has been attached there are credits, these may be collected judicially without the necessity of a previous cession or transfer made by the former in favor of the judgment creditor, because otherwise the attachments would be illusory, as well as any other proceedings of the executory action.—*Decision of November 24, 1877.*

2. That the debtor be required to present in the office of the clerk the titles of ownership to the property within six days.[1]

ART. 1488. If it should appear from the certificate of the register that the property is encumbered with second or subsequent uncancelled mortgages, the mortgagees shall be informed of the execution in order that they may intervene in the appraisement and sale of the property, should they desire so to do.

ART. 1489. After the notice mentioned in the foregoing article has been served, the compulsory process shall continue without further notice to the mortgagees.

If the latter should enter their appearance before the appraisement, either in person or through a solicitor, they shall have the right to appoint at their own cost an expert to appraise, with the experts appointed by the defendant and by the plaintiff, the value of the mortgaged estate or estates.

In such case they shall also be notified of the order fixing the day for the public sale.

ART. 1490. After the titles have been presented by the debtor, a separate branch of the record shall be formed with the same, and the plaintiff shall be informed thereof, in order that he may state whether he deems them sufficient or indicate the correction of the errors he may find therein.

ART. 1491. If the debtor should not have presented the titles within the period fixed in subdivision 2 of article 1487, the judge may judicially compel him to present the same, or order that a certificate be issued of the entries in the registry of property relating thereto, and true copies of the respective instruments, in a proper case.

If no results should be obtained from these proceedings, or if no titles of ownership should exist, the absence thereof may be supplied by the means established in title 14 of the mortgage law.

All these steps shall be taken at the instance of the execution creditor and at the expense of the debtor.[2]

ART. 1492. During the performance of the proceedings mentioned in the foregoing article, and after the prescriptions of article 1488 have been observed, in a proper case, the property shall be appraised in the manner established in articles 1481 *et seq.*, if the creditor should so request.

If there should be three experts on account of the subsequent mortgagees having made use of the right granted them by article 1489, the appraisement shall be determined by a majority vote of the experts.

[1] According to the royal order of May 11, 1888, in order that the provisions of this article may be considered as complied with, it is necessary that there should be included in the record an abstract covering the entire period of the existence of the registry relating to the freedom from encumbrances of the property attached, or specifying the charges thereon.

[2] The provisions of the title mentioned of the mortgage law are applicable only to property or rights acquired before January 1, 1863.

ART. 1493. After the appraisement has been made, and when, in the judgment of the plaintiff, the titles of property are sufficient, or the lack thereof has been supplied in any possible manner, the property shall be offered at public auction for a period of twenty days, in the manner prescribed in article 1486.

In such case the edicts shall also be published in the *Gaceta* of the general government, if the judge should deem it advisable in view of the value of the property, and in every case in the official bulletin of the province, where there is one.

ART. 1494. There shall also be stated in the edicts that the titles of ownership of the property will be kept in the office of the clerk subject to the examination of the persons who desire to bid at the sale and that the bidders must accept said titles, and that they shall not have the right to demand others.

After the sale no claim of the purchaser relating to the insufficiency of or defects in the titles shall be entertained.

ART. 1495. At the instance of the creditors the property may be sold at public auction without previously supplying the lack of evidences of title, which circumstance shall be stated in the edicts.

In such case the provisions contained in rule 5 of articles 136 and 139 of the regulations for the execution of the mortgage law of Cuba or Porto Rico shall be observed.

ART. 1496. Before the sale takes place, the debtor may release his property from the execution by paying the principal and costs. After the sale it shall become irrevocable.

ART. 1497. At the sale of personal and real property no bids shall be accepted which do not amount to at least two-thirds of the appraised value.

Bids may be offered and received on behalf of a third person.

ART. 1498. In order to take part in the auction the bidders must previously deposit with the court, or with the establishment provided for the purpose, an amount equal to at least 10 per cent of the appraised value of the property, without which requisite they shall not be admitted.

Said deposits shall be returned to their respective owners immediately after the sale, excepting the amount deposited by the successful bidder, which shall remain on deposit as a guaranty that he will comply with the terms of the sale and, in a proper case, it shall be applied to the purchase price.

ART. 1499. The execution creditor may bid at the sale and increase the bids without requiring him to make the deposit mentioned in the foregoing article.

ART. 1500. If the property should be real property, situate beyond the judicial district where the proceedings are being held, the sale may be held simultaneously in both courts, at the instance of any of the parties, which circumstance shall be stated in the edicts.

The judge may also order the double and simultaneous sale, even though none of the parties sould have requested it, when, in his judgment, it be necessary in view of the value or special conditions of the property.

ART. 1501. The judge, assisted by the clerk and by the subordinate official who is to announce the sale to the public, shall preside at the same. The proceedings shall begin with the reading of a description of the property and the conditions of the sale. The bids shall be publicly offered and the sale shall be closed by the judge when he considers it proper and when no higher bids are received.

Immediately thereafter the amount offered and the name of the successful bidder shall be announced to the public, and the agreement and acceptance of the purchaser shall be entered upon the minutes, which shall be signed by the judge, the clerk and the subordinate official, and by the parties, if present.

ART. 1502. Should there be no bidder, the execution creditor shall have the option of requesting that the property be awarded to him for two-thirds its appraised value, or that it be again offered at public auction, based upon a reduction of 25 per cent of the appraised value.

The second sale shall be announced and held in the same manner as the first one.[1]

ART. 1503. Should there be no bidders at the second sale, the plaintiff may require either that the property be sold to him at two-thirds of the price which may have served as a basis for the second sale, or that he be entrusted with the management thereof for the purpose of applying the profits to the payment of the interest and of the principal obligation.

In such case the judicial administration which may have been instituted in accordance with the provisions of article 1448 shall cease.[2]

ART. 1504. If the plaintiff does not agree to either of the two measures mentioned in the foregoing article he may request that a third auction be held without fixing the minimum bid to be accepted.

In such case, if there should be a bidder offering two-thirds of the price which served as a basis for the second auction, and who accepts the conditions of the sale, the said sale shall be approved.

If a bid of less than said two-thirds should be offered, the approval of

[1] The award of property in favor of the execution creditor may be entered in the registry of property without the necessity of a public instrument by virtue of a judicial mandate including the award, as article 1514 of the law of procedure only prescribes the requisite of an instrument for the judicial sale at public auction and not for the award; but the fact that a public instrument has been executed for the purpose of making the award is not, however, an obstacle to its inscription, as the deed is an instrument which can be recorded.—*Decision of the director-general of registers of property and notaries public of June 30, 1879.*

[2] Orders for sale and the other orders issued for the fulfillment theerof are not final.—*Decision of July 12, 1878.*

the sale shall be held in abeyance, and the debtor shall be informed of the price offered, who, within the next nine days, may pay the creditor and have his property released, or may procure some person to increase the bid, making the deposit prescribed in article 1498.

After the nine days have elapsed without the debtor either having paid or increased the bid, the sale shall be approved and ordered consummated.

ART. 1505. If a higher bid should be offered within the period mentioned, the judge shall order the two bidders to appear before him at a day and hour fixed and to compete in their bidding, and he shall award the property to the person making the most advantageous proposition.

If the first bidder, in view of the higher bid made by the second, should state that he yields the estate, the proceeding prescribed in the foregoing paragraph shall not be observed.

ART. 1506. If at the third sale a bid should be offered which is acceptable in so far as the price is concerned, but offering payments in installments or changing some other condition, the creditor shall be informed thereof, and shall be permitted within the next nine days to request the award of the property in accordance with the provisions of article 1503, and if he should not make use of this right the sale shall be approved in accordance with the terms offered by the bidder.

ART. 1507. With the exception of the cases referred to in the three preceding articles, if a sale is made at any of the auctions, it shall at once be approved by the judge, who shall order, if the property should be personal or live stock, that it be delivered to the purchaser upon the payment of the purchase price within three days.

For said purpose, the proper order shall be given to the depositary and an entry shall be made upon the record of the payment of the purchase price and the delivery of the property, a receipt for which the purchaser shall be required to sign.

ART. 1508. If the property should be real property, the sale thereof shall be approved at once. If a double sale should have taken place, it shall be awarded to the highest bidder as soon as the proceedings held for the sale in the other court are received.

If the two bids should be equal, the two persons offering them shall appear before the judge taking cognizance of the proceedings, and compete for the property, for which purpose said judge shall fix a day and hour, and shall award the property to the one offering the higher price, returning to the other the deposit he may have made.[1]

[1] The proceedings to carry out an order for sale are only supplementary to the executory action, which is not terminated until payment is made, as has been declared by the Supreme Court, and the right of the debtor as well as of the creditor to institute an ordinary action remains unimpaired.—*Decision of May 28, 1879.*

ART. 1509. After the sale has been approved, the court clerk shall liquidate the incumbrances upon the real property sold, deducting from the price the capital of the annuities and of other perpetual charges only.

This liquidation shall be referred for three days to each of the parties and to the purchaser, and in view of their statements the judge shall approve the same without further proceedings, or shall order that the proper corrections be made.

ART. 1510. In the same order by which the liquidation of the charges is approved, the purchaser shall be ordered to deposit the amount appearing from the liquidation within a brief period, not to exceed eight days.

ART. 1511. If the purchaser should not deposit the price within the period fixed, or the sale should not be consummated, through some reason attributable to him, a new sale shall be held, and said purchaser shall be liable for the reduction in the amount received at such new sale and for the costs which may be incurred on this account.

ART. 1512. After the price has been deposited, the defendant shall be required to execute within three days the proper deed of sale in favor of the purchaser.

Should he not do so, or should he be prevented from executing the deed on account of his absence, his default, or for any other reason whatsoever, the judge shall execute said deed *ex officio*.

ART. 1513. After the deed has been executed there shall be delivered to the purchaser the titles of ownership, and the property shall be placed at his disposal, the necessary orders being given for the purpose.

If the purchaser should so request, he shall be introduced as the owner of the property to such persons as he may designate, or he shall be placed in possession thereof.[1]

ART. 1514. If the execution should have been issued at the instance of a second or third mortgage creditor, the amount of the preferred mortgage credits for which the estate sold is liable shall be deposited in the establishment provided therefor, and the balance shall be delivered without delay to the execution creditor, if the same should not exceed or be less than the amount of his credit.

If it should exceed the amount of his credit he shall be given the principal and interest, and after the taxation of costs has been made and approved, as well as the proper liquidation, he shall be paid the balance to which he may be entitled.[2]

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[1] The sale of an estate made judicially for the purpose of satisfying a credit secured by the same, annuls *de jure* the other mortgage records which also encumbered it, and the estate is released from these encumbrances for the purchaser, and articles 105, 133, 146, and 156 of the mortgage law cannot be successfully pleaded thereagainst.—*Decision of December 6, 1876.*

[2] An executory action having been instituted at the instance of a mortgage creditor, and the estates of the debtor having been sold at the instance of the purchaser of the

ART. 1515. If the execution should have been issued by virtue of instruments payable to bearer secured by a mortgage recorded against the estate sold, and if there are other similar instruments outstanding, the net amount received at the sale shall be distributed pro rata among all of them, the execution creditor receiving his share, and the portions pertaining to the other holders shall be deposited until their titles are cancelled, for which purpose the procedure established in article 82 of the mortgage law may be employed.[1]

ART. 1516. In the cases mentioned in the two preceding articles, the records of the mortgages to which the estate is subject shall be cancelled at the instance of the purchaser, for which purpose an order shall be issued stating that the proceeds from the sale were not sufficient to cover the claim of the execution creditor and, in a proper case, that the amount of the claim of the preferred creditor has been deposited, or the balance, should there be any, at the disposal of the persons interested.

ART. 1517. If the estate should have been awarded to the execution creditor in payment of his claim, it shall be understood as having been made without prejudice to prior mortgages, and also to subsequent ones if the proceeds from the sale should be sufficient to satisfy them. Should the proceeds not be sufficient therefor, the record of the last ones may be cancelled, in accordance with the provisions contained in the foregoing article.

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property subject to the execution, which estates are charged with other prior mortgage liabilities, and if the amount of these preferred credits should be deposited, the records relating to the same may be cancelled without further proceedings, provided that the deposit is made in the establishment provided for the purpose, which can not be made in the office of the court clerk. By such cancellation the preferred creditors who do not enjoy, according to law, the right to intervene in the compulsory process, can not be injured, because it must be taken into consideration that the last creditors may perhaps have to be satisfied with a reduction in their claims, and on the contrary, articles 1516 and 1518, in so far as they relate to the preferred creditors, start from the supposition that the amount of their credit has been deposited in full. Neither are there grounds to plead, for the purpose of refusing to make such cancellation, that the said article repeals and annuls article 105 and others of the mortgage law, because if the object of every mortgage is to insure to the creditor that his claim will be paid, this object is attained by depositing the proper amount in the care of a court and at the disposal of the legitimate owner.—*Decision of the Director-General of Registries, of May 9, 1890.*

[1] The provisions of article 82 of the mortgage law, relating to the procedure, are as follows:

"Records made to account for sums represented by instruments executed to bearer can not be cancelled if the extinction of all the secured obligations can not be proven, unless a copy of the judicial decree declaring the extinction of said obligations is presented.

"In the case mentioned in the preceding paragraph, in order to issue the judicial decree, four calls of those having a right to oppose the cancellation must be made by means of public notices and advertisements in the official newspapers, each one for the period of six months."

ART. 1518. Unless the principal and interest of the claim of the execution creditor, together with all the costs of the execution, are satisfied in full, the proceeds of the sale can not be applied to any claims other than those which have been declared preferred by a final judgment, reserving the provisions contained in articles 1514 and 1515.

In no case shall the costs incurred by the defense in an executory action be preferred.[1]

ART. 1519. If, in accordance with the provisions of article 1503, the creditor should request that the administration of the property attached be entrusted to him, the judge shall order that it be delivered to him according to the proper inventory, and that he be presented as such to the persons which the creditor himself may designate, a statement of which shall be entered upon the record.

ART. 1520. The creditor and the debtor may by private agreements establish the conditions under which the former is to administer the property attached, and the manner in which and periods when he is to render an account of his administration.

Should they not make such agreements, it shall be taken for granted that the property is to be managed according to the customs of the country, and that the creditor is to render yearly accounts of his administration.

In such case, if the property involved be rural, the debtor may intervene in the harvesting of the crops, in person or through a duly empowered representative.

ART. 1521. The account submitted by the creditor shall be referred to the debtor for a period of fifteen days, and a copy of such corrections as the latter may make shall be delivered to the creditor in order that he may state within a period of nine days whether he does or does not agree thereto.

ART. 1522. Should he not agree to the account, the judge shall cite him, together with the defendant, to appear at an oral hearing within three days, at which hearing the pertinent evidence submitted shall be admitted. A reasonable period shall be fixed by the judge, not to exceed ten days, for the purpose of taking the evidence.

The proper minutes of such evidence shall be made, and the documents which may be presented by the parties shall be attached to the record.

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[1] The provisions of this article to the effect that the costs incurred in the defense of the debtor in an executory action shall in no case be preferred is a declaration for a special case, which does not establish a general rule contrary to law, because the construction of the law does not permit such an interpretation, for when it desired to establish the preference of the costs this was done in article 1266, relating to the cost of taking the inventory and that of the judicial proceedings in testamentary and intestate successions, or it provided for the effectiveness of the preference in article 1228, in which it ordered that the trustees should be provided with funds from the estate to meet the expenses incurred in connection therewith.—*Decision of March 5, 1874.*

ART. 1523. After the period for the taking of evidence has expired, the judge shall render a decision on or before the fifth day, in which he shall decide what may be proper upon the approval or correction of the account presented by the creditor.

This decision may be appealed from for review and for a stay of proceedings.

ART. 1524. All other questions which may arise between the creditor and the execution debtor in regard to the administration of the property attached shall be heard and determined in accordance with the procedure established for incidental issues.

ART. 1525. As soon as the proceeds from the property are sufficient to satisfy the claim of the creditor and the interest thereon, together with the costs, the management and possession of said property shall revest in the debtor.

ART. 1526. The execution debtor may at any time pay the balance due upon his debt, according to the last account presented by the creditor, in which case the debtor shall be immediately vested with the possession of his property and the latter shall be relieved from the administration thereof, without prejudice to rendering a general account within the following fifteen days, or to the claims to which either may believe himself entitled.

ART. 1527. The creditor may resign from the administration of the property at any time he deems proper, and request that it be again offered at public sale, based upon a reduction of 25 per cent of its appraised value, and if there should be no bidder, that it be awarded to him at two-thirds of said value in so far as necessary to satisfy his claim, after deducting the amounts he may have received on account.

ART. 1528. If the execution has been issued against property specially mortgaged, and there should be an express stipulation in the contract to the effect that the creditor may take charge of the administration of the property until the sale thereof takes place, the plaintiff may request that he be placed in possession of the said property.

The judge shall grant this petition, without a hearing of the debtor, if said clause is contained in the mortgage or in another additional instrument, without prejudice to continuing the executory action at the instance of the creditor.

The provisions of articles 1519 *et seq.* shall apply to this case.

ART. 1529. All the appeals which may be proper during the course of the proceedings for judicial compulsion in executory actions shall be allowed for a review of proceedings only.

The incidental issues mentioned in article 1524 shall not be included in these provisions, nor such other incidental issues which are heard and determined in a separate record, or which have no reference to the sale of the property or to the payment of the creditor.

SECTION III.—*Interventions.*

ART. 1530. Interventions must be based either upon the ownership of the property attached as belonging to the attachment debtor, or upon the right of the third person to recover his credit before the execution creditor is reimbursed.[1]

ART. 1531. Interventions may be interposed at any stage of the executory action.

If the intervention should be based upon ownership, it shall not be admitted after the execution of the deed of sale or the consummation of the sale of the property involved, or its award in payment and delivery to the execution creditor, reserving the right of the third person to institute the action which he may deem proper against any person and in the manner which may be proper.

If the intervention should be based upon a preferred right, it shall not be admitted after payment has been made to the execution creditor.[2]

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[1] The violation of articles 1530 and 1541 can not serve as a basis for an appeal for annulment of judgment, as the supreme court has repeatedly declared, as their provisions are purely formal.—*Decision of December 19, 1883.*

As the supreme court has repeatedly declared, the intervenor by reason of ownership must prove his rights to the property which he claims, presenting the title upon which he bases the same.

In order to institute an intervention based upon ownership it is not necessary that the attachment shall have been recorded in the registry of property.—*Decision of October 10, 1889.*

The right of preference, when the attachment has been made by a private individual, before the treasury did so, must be heard and determined by the ordinary courts.—*Royal decree of September 25, 1889.*

An intervention can not be instituted between the time the property has been awarded and delivered to the execution creditor.—*Decision of April 15, 1884.*

Article 1532 of the law of procedure has no further scope than to fix the two only kinds of interventions which are admissible.—*Decision of July 4, 1884.*

A true intervention can not be instituted in an executory action except by a person juridically different from the execution creditor or debtor.—*Decision of December 22, 1887.*

[2] Demands in intervention are always admissible during the course of the proceedings for judicial compulsion, which are not closed until the execution creditor is paid his credit in full or the property sold is delivered to the purchaser, for, as the supreme court has already declared, these proceedings are inherent in the executory action and are supplemental thereto.—*Decision of April 28, 1881.*

The object of demands in intervention based upon ownership is to claim a material thing which has been attached at the instance of the creditor, and therefore can be successful only when the intervenor proves the ownership of the thing, instituting a real action for the purpose of recovering the same. Courts can not decide the question of a preferred right in a demand in intervention based upon ownership and *vice versa.*—*Decision of April 13, 1882.*

It is a recognized legal principle that demands in intervention based upon ownership are not admissible after the deed of sale has been executed or the sale of the

ART. 1532. Complaints in intervention shall not suspend the course of the executory proceedings of which they are an issue.

They shall be heard and determined in a separate record in accordance with the proceedings prescribed for the declaratory action which may be proper in view of the amount involved, in accordance with the provisions of article 487.[1]

ART. 1533. When the intervention is based upon ownership, as soon as a final order of sale is issued in an executory action, the proceedings

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property involved has been consummated or after its award in payment and delivery to the execution creditor, reserving the right of the third person to institute an action against the person and in the manner which he may deem proper.—*Decision of December 27, 1883.*

When a demand in intervention is interposed based upon the ownership of attached estates, and the chamber of the audiencia does not admit the same because it considers that the title on which it is based is null and void, it can not afterwards be stated as a basis for an appeal for annulment of judgment that said chamber has dispossessed the owner of what belongs to him, because this is making a supposition of the question.—*Decision of March 13, 1884.*

A decision allowing an intervention instituted by a married woman, based upon ownership, for the purpose of recovering some property attached as belonging to the conjugal partnership, when it appears from a public document that the execution debtor specially received the property belonging to his wife by inheritance, acting in the character of a husband and not by virtue of the power of attorney granted him to represent her in said act, at a time when the formalities prescribed by the mortgage law were not necessary, does not incur in an error of law or of fact, nor does it violate the principle of law that *actore non probante reus est absolvendus.*—*Decision of March 14, 1884.*

When a husband states in a public instrument that he binds himself to execute in favor of his wife a dowry instrument, and after many years he acknowledges also in a public instrument that he had previously received from his wife, by way of appraised dowry, different effects, such contracts can not serve as valid legal grounds to allow the action for ownership instituted by her in an intervention based thereupon, in executory proceedings instituted against her husband, because said contracts can serve only to prove the preference of the credits and not the ownership, and this may be said with better grounds when the identity is not proven of the property which the husband acknowledges to have received and which it appears was attached in the executory proceedings, and a decision supporting this doctrine does not violate the law of these contracts.—*Decision of June 16, 1884.*

[1] An intervention can not be considered in an action if the person instituting the same does not oppose the legitimate and acknowledged credit which is preferred according to law.—*Decision of July 3, 1876.*

Interventions are always admissible during the course of the proceedings for judicial compulsion which are not closed until the execution creditor is paid his claim in full; and in not admitting the intervention instituted in the proper manner and at the proper time, the provisions of this article are violated as well as the doctrine established in a decision of December 24, 1861, in which it was declared that an executory action is not closed by the order for the public sale.—*Decision of April 21, 1881.*

The violation of this article can not serve as a basis for an appeal for annulment of judgment, as the supreme court has repeatedly declared, because its provisions are purely a matter of form.—*December 29, 1863.*

for judicial compulsion shall be suspended with regard to the property involved in the intervention until a decision is rendered upon the latter.[1]

ART. 1534. If the intervention should be based upon a preferred right, the proceedings for judicial compulsion shall be continued until the sale of the property attached takes place, and the proceeds therefrom shall be deposited in the establishment provided for the purpose, in order that payment may be made to the creditors in the order of preference stated in the judgment rendered upon the intervention.[2]

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[1] The provisions contained in this article are subordinated to the prescriptions of article 133 of the mortgage law.—*Decision of January 4, 1888.*

An intervention based upon ownership does not suspend the executory action, and it must be heard and determined in a separate record, and after the order for sale has been issued the proceedings must be suspended until the intervention is decided.—*Decision of September 22, 1875.*

If a complaint in intervention is interposed based upon ownership in an executory action, when the order for sale has been agreed to or issued, the proceedings must be suspended in accordance with the provisions of this article, and, therefore, a decision which affirms a judgment by which the admission was denied of an intervention interposed without containing any error not capable of being corrected, violates the provisions hereof.—*Decision of December 16, 1880.*

In order to be considered a third person it is necessary, in accordance with the mortgage law, that a title previously recorded be presented, and after the third person has proven his ownership any other title of possession has no value, even if the execution creditor should have it.—*Decision of February 5, 1883.*

Interventions based upon ownership are not admissible after the deed has been executed, or the sale of the property has been consummated, or after the award thereof in payment and delivery to the creditor, as jurisprudence has repeatedly stated.—*Decision of October 8, 1883.*

The provisions of this article with regard to the suspension of the executory proceedings when the intervention is based upon ownership is limited by article 133 of the mortgage law to the cases included therein.—*Decision of January 4, 1888.*

[2] Interventions based upon a preferred right must be based on the right of the third person to recover his credit before the execution creditor, it being indispensable, therefore, that the debtor of both credits be one and the same person or judicial entity, or that the third person be, as well as the execution creditor, a creditor of the execution debtor, as the Supreme Court has already declared.—*Decision of March 30, 1883.*

The debts contracted by the husband during marriage for and in the exercise of his industry or profession, with which he contributed to the support of his family, can not be considered as personal and private debts of his own, nor can they be excepted, therefore, from payment from the proceeds and income derived from the property belonging to the wife, which are liable, as is that of the husband, for the maintenance of the marriage charges; therefore, when the debt claimed is of this character, and for its payment proceeds from property belonging to the wife are attached, the jurisprudence laid down by the Supreme Court, in an opinion of February 21, 1881, and others, is not applicable to the case, and it can not be violated by a decision disallowing the intervention, and according to which, in order that a creditor may be preferred to the rights of the wife with regard to the proceeds and rents derived from the paraphernal property, it is necessary that she prove and justify in the action that the debt was contracted by the husband.—*Decision of June 9, 1883.*

A decision which in applying the principle *qui prior est tempore potior est jure,*

ART. 1535. With the complaint in intervention must be presented the title on which it is based, without which requisite it shall not be acted upon.[1]

ART. 1536. In no case shall a second intervention be allowed, whether based upon ownership or upon a preferred right, based upon titles or rights possessed by the intervenor at the time of interposing the first intervention.

The opposition made for this reason to the admission of the complaint may be heard and decided according to the procedure established for dilatory exceptions, and if it should be sustained, the cost shall be taxed against the intervenor.

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declares the preference of a credit of an intervenor, does not violate this principle nor that of *pacta sunt servanda*, when there existing no agreement between the two litigants which could have been violated, the credit of the intervenor bears a prior date.—*Decision of January 5, 1884.*

Although it is true that a married woman has a right to recover her marriage portion with preference to the creditors of the husband, unless the latter present a preferred title, in order that her preference may be recognized, it is necessary that she prove that the property in question was delivered to the husband, and if this is not proven, a decision which disallows an intervention based upon a preferred right, the action being based on the fact that the property in question has this character, without any violation of fact or of law being alleged in legal form against the consideration of the evidence made by the adjudging chamber, can not be appealed from for an annulment of judgment.—*Decision of February 20, 1884.*

A chamber which gives the preference over a credit appearing in a public instrument to one of later date, under the erroneous impression that the latter is pignorative, notwithstanding the fact that the creditor did not have possession of the thing which was supposed to have been given in pledge, incurs a legal error, and therefore the decision may be appealed from for annulment.—*Decision of April 12, 1884.*

A wife who obtains for herself and child a temporary allowance for her support, a retention of the salary of her husband being ordered, has no right of preference for the collection thereof over another creditor of the husband, when said spouses live together and the wife has not instituted an action for a definite allowance for her support.—*Decision of April 17, 1885.*

[1]An intervention based upon ownership has no legal support if the title upon which it is based is not recorded in the registry of property (*Decision of April 28, 1870*); but this is understood when real actions involving real property against third persons are instituted.—*Decision of May 28, 1889.*

Although, according to this article, it is necessary to present with the complaint the title upon which it is based, it does not provide, as does article 1533, for the cases mentioned therein, that it be ignored when said requisite is not filled, but only that it be not acted upon, which signifies that the admission thereof is to be suspended until the title or document upon which it is based is presented.—*Decision of February 27, 1883.*

In order that property may be considered as dowry property for the purposes of its preference in the collection by reason of an intervention, it is necessary that it be proven that the property was delivered to the husband as dowry property.—*Decision of April 30, 1885.*

A ruling which only conditionally suspends the course of an intervention until the document referred to in this article is presented, is not final.—*Decision of March 27, 1889.*

ART. 1537. The execution creditor and the execution debtor shall be parties to the intervention, and a delivery of copies of the complaint and other documents shall be equivalent to a summons for this action.

Both parties must answer the complaint within the proper period, to be counted from the date of the delivery of said copies, and should they not do so nor enter their appearance in the proceedings, the complaint shall be considered answered by the person in default, the proceedings being continued in default.[1]

ART. 1538. The execution creditor who has been declared in default in the executory action shall also be considered in default in the intervention; but if his domicile were known, a copy of the complaint and of the documents attached thereto shall be served upon him.

ART. 1539. If the plaintiff and the defendant acquiesce in the intervention, the judge shall, without further proceedings, order the record to be brought before him, with a citation of the parties, and render judgment.

The same action shall be taken if both parties fail to answer to the complaint.

Said judgment may be appealed from for a review and for a stay of proceedings.

ART. 1540. If property not involved in an intervention based upon ownership is attached, the proceedings for judicial compulsion may be continued against the same, notwithstanding the intervention, and the proceeds shall be delivered to the execution creditor on account of his claim.

ART. 1541. The provisions contained in this section shall apply to interventions interposed in proceedings for the execution of judgments and in any other proceedings or incidental issue in which the attachment and sale of property takes place.

TITLE XVI.

COMPULSORY PROCESS IN COMMERCIAL AFFAIRS.

ART. 1542. Proceedings for judicial compulsion in commercial affairs may be instituted only before courts of first instance against the debtors of the following classes:

1. The consignees to whom merchandise may have been delivered or any other person who has legally received the same, for the trans-

[1] A true intervention can be interposed only by a person other than the execution creditor or the execution debtor.—*Decision of December 22, 1887.*

Even though the execution debtor should be the heir of the debtor, if the property should not have been derived from this inheritance, but was private property, he may oppose the intervention, because he is a different person as the heir and the owner of such property.—*Decision of March 28, 1885.*

portation charges by land or water, provided that one month has not elapsed since the date of the delivery.

2. Marine insurance underwriters for the amount of the losses and damages suffered by the things insured in the risks against which they are insured.

3. The insured for the premiums of marine insurance.

4. The freighters and captains of vessels for the provisions furnished for the same and the consignees thereof when the supplies were furnished by their order.

5. The said freighters for the payment of salaries due the ship's crew, adjusted by month or by voyage, and the captains, when the said freighters are not at the place where the payments are to be made.

6. Persons transacting through brokers, for the brokerage due in the transaction.

ART. 1543. Judicial compulsion can not be ordered if the creditors who request the same do not prove their right in the following manner:

Credits for freight or transportation, with the original bill of lading, signed by the freighter, and the receipt for the merchandise mentioned in said document.

Those arising from insurance contracts, whether in favor of the insured or of the underwriters, by the public instrument, policy, or private contract, according to the manner in which the insurance was written.

The supplies furnished for the provisioning of the vessel, with the invoices mentioning the value of the supplies furnished, approved by the freighter, captain, or consignee by whose orders the creditor may have furnished them.

The salaries of the crew, by the copies of the contracts entered in the ship's account book, in accordance with article 699 of the Code of Commerce, of which the captain must furnish a copy to each person interested, with a memorandum of the amount due. If the captain should refuse to deliver such copies he shall be obliged to exhibit the book, from which a transcript shall be made in his presence of the entries relating to the credit claimed, which shall be considered equivalent to the certificate which the captain should have issued.

Brokerage claims, by the memoranda of the contracts or transactions upon which they are based, signed by the debtor; or of the policies of which they must retain a copy; and, in the absence of either document, by the copies of the entries made in the register, in accordance with the provisions of articles 91, 92, 93, 94, and 95 of the Code of Commerce.

ART. 1544. The credit with regard to which judicial compulsion is requested must appear liquidated in the instrument presented. Otherwise such compulsion shall not be ordered until the liquidation is made, by agreement of the parties, by a judicial decision or by arbitrators.

ART. 1545. If the document presented by the creditor should not be

ART. 1537. The execution creditor and the exec[illegible]rivate contract or be parties to the intervention, and a delivery of [illegible]fession of judgment plaint and other documents shall be equivale[illegible] said acknowledgment action. [illegible]ing the judicial compulsion.

Both parties must answer the com[illegible] of the document, the cred- to be counted from the date of the [illegible] which may be proper in view they not do so nor enter their a[illegible] plaint shall be considered a[illegible] the debtor must acknowledge the ceedings being continued [illegible] which proves the transaction; and

ART. 1538. The exe[illegible] entry made by the broker should have in the executory a[illegible] thereof shall be verified by the con- vention; but if h[illegible] debtor, or by his commercial books. of the docume[illegible]

ART. 153[illegible] the presentation of the instrument importing a vention, t[illegible] the creditor shall request the judicial compul- to be b[illegible] form of which shall be the same as that judgr[illegible] actions, and if the judge should consider T[illegible] proper, an order shall be issued and delivered to a cc[illegible] that, in the presence of the court clerk, he may [illegible] of the claim of the debtor, and if he should not make [illegible] at once he shall proceed to attach his property. The [illegible] articles 1440 *et seq.* of this law shall be observed in the [illegible] payment and attachment.

ART. 1548. After the attachment has been made, the debtor shall be [illegible] the sale of the property attached if within the third day [illegible] not plead a legitimate exception against the judicial [illegible]

ART. 1549. In these proceedings the following exceptions only shall be allowed:

1. Falsity of the instruments.
2. Lack of personal capacity on the part of the holder thereof.
3. Payment.
4. Compromise.

Whatever exception the debtor pleads, it must be interposed in writing and be proven within the three days designated in the citation.

ART. 1550. The exceptions shall be proven by documents or by the confession in court of the creditor, and can not be proven by any of the other means of proof which would be proper in other actions.

ART. 1551. If the debtor should present a written objection, it shall be attached to the record with the documents accompanying the same. He must also attach a copy of said written objection for delivery to the opposite party.

If a judicial confession of the creditor should be requested in the same instrument with regard to the facts on which the exception is based, the judge shall grant the request at once and shall immediately thereafter take the deposition, if possible, or otherwise, within the

shortest period of time possible, without the delay prejudicing the debtor in any manner.

ART. 1552. If the evidence submitted should be documentary and comparison of the documents should be requested, the judge, for 's purpose only, may extend the period fixed in article 1549 to days.

ART. 1553. Should no objection be presented by the debtor within period of the citation, the court clerk shall make a record of this fact, and thereafter he shall not be allowed to make any opposition whatsoever.

ART. 1554. After the evidence has been taken, or after a statement has been entered to the effect that no opposition has been made, the court clerk shall make a report thereon and the judge shall order the record brought before him, with a citation of the parties for judgment.

If any of the parties should request it within one day after the notification, the judge shall fix a day for the hearing within the four days thereafter.

The parties may, at the time of the hearing, present any document which they may deem proper, in which case the court clerk shall make an abstract thereof which the judge shall consider in rendering judgment.

ART. 1555. The judge shall render judgment within three days, ordering that the sale of the property attached be proceeded with, if the debtor should not have opposed the complaint or should not have proved his exception, otherwise he shall revoke the order in which he decreed the judicial compulsion.

In the former case the costs shall be imposed upon the debtor, and in the latter upon the creditor.

ART. 1556. No appeal shall lie against judgments rendered in these proceedings, the parties reserving their right to institute such ordinary action as may be proper.

ART. 1557. If the judgment should order that the judicial compulsion be carried into effect, the creditor shall be obliged before he is paid his claim, and if the debtor should request it, to furnish security sufficient to satisfy any judgment which may be rendered in any action instituted by the debtor.

This security shall be cancelled *de jure* if no action is instituted within six months.

ART. 1558. Credit companies or institutions legally established, whose business it is to make mortgage loans or loans secured by real estate, may demand the payment of their mortgage credits by judicial compulsion in the manner prescribed in the decree law of February 5, 1869.[1]

[1] See the decree law referred to in Appendix.

a public instrument or a policy of a broker but a private contract or another document which does not import a confession of judgment without the acknowledgment of the debtors, said acknowledgment must precede the order of the court decreeing the judicial compulsion. If the debtor should deny the authenticity of the document, the creditor may enforce his right in the action which may be proper in view of the amount involved.

ART. 1546. In brokerage claims the debtor must acknowledge the signature of the invoice or contract which proves the transaction; and if only a memorandum of the entry made by the broker should have been presented, the correctness thereof shall be verified by the confession in court of the said debtor, or by his commercial books.

ART. 1547. Upon the presentation of the instrument importing a confession of judgment, the creditor shall request the judicial compulsion in a written petition, the form of which shall be the same as that established for executory actions, and if the judge should consider that it is legally proper, an order shall be issued and delivered to a bailiff, in order that, in the presence of the court clerk, he may demand payment of the claim of the debtor, and if he should not make the payment at once he shall proceed to attach his property. The provisions of articles 1440 *et seq.* of this law shall be observed in the demand for payment and attachment.

ART. 1548. After the attachment has been made, the debtor shall be cited for the sale of the property attached if within the third day he should not plead a legitimate exception against the judicial compulsion.

ART. 1549. In these proceedings the following exceptions only shall be allowed:

1. Falsity of the instruments.
2. Lack of personal capacity on the part of the holder thereof.
3. Payment.
4. Compromise.

Whatever exception the debtor pleads, it must be interposed in writing and be proven within the three days designated in the citation.

ART. 1550. The exceptions shall be proven by documents or by the confession in court of the creditor, and can not be proven by any of the other means of proof which would be proper in other actions.

ART. 1551. If the debtor should present a written objection, it shall be attached to the record with the documents accompanying the same. He must also attach a copy of said written objection for delivery to the opposite party.

If a judicial confession of the creditor should be requested in the same instrument with regard to the facts on which the exception is based, the judge shall grant the request at once and shall immediately thereafter take the deposition, if possible, or otherwise, within the

shortest period of time possible, without the delay prejudicing the debtor in any manner.

ART. 1552. If the evidence submitted should be documentary and a comparison of the documents should be requested, the judge, for this purpose only, may extend the period fixed in article 1549 to ten days.

ART. 1553. Should no objection be presented by the debtor within the period of the citation, the court clerk shall make a record of this fact, and thereafter he shall not be allowed to make any opposition whatsoever.

ART. 1554. After the evidence has been taken, or after a statement has been entered to the effect that no opposition has been made, the court clerk shall make a report thereon and the judge shall order the record brought before him, with a citation of the parties for judgment.

If any of the parties should request it within one day after the notification, the judge shall fix a day for the hearing within the four days thereafter.

The parties may, at the time of the hearing, present any document which they may deem proper, in which case the court clerk shall make an abstract thereof which the judge shall consider in rendering judgment.

ART. 1555. The judge shall render judgment within three days, ordering that the sale of the property attached be proceeded with, if the debtor should not have opposed the complaint or should not have proved his exception, otherwise he shall revoke the order in which he decreed the judicial compulsion.

In the former case the costs shall be imposed upon the debtor, and in the latter upon the creditor.

ART. 1556. No appeal shall lie against judgments rendered in these proceedings, the parties reserving their right to institute such ordinary action as may be proper.

ART. 1557. If the judgment should order that the judicial compulsion be carried into effect, the creditor shall be obliged before he is paid his claim, and if the debtor should request it, to furnish security sufficient to satisfy any judgment which may be rendered in any action instituted by the debtor.

This security shall be cancelled *de jure* if no action is instituted within six months.

ART. 1558. Credit companies or institutions legally established, whose business it is to make mortgage loans or loans secured by real estate, may demand the payment of their mortgage credits by judicial compulsion in the manner prescribed in the decree law of February 5, 1869.[1]

[1]See the decree law referred to in Appendix.

TITLE XVII.

ACTIONS OF UNLAWFUL DETAINER.

SECTION 1.—*General provisions.*

ART. 1559. The cognizance of actions of unlawful detainer pertains exclusively to the ordinary jurisdiction.

This jurisdiction extends to the execution of the judgment which may be rendered, without the necessity of any assistance therefor being requested.[1]

ART. 1560. The municipal judges of the place or district in which the estate is situate shall take cognizance in first instance of an action of unlawful detainer when it is based on one of the following reasons:

1. The termination of the period stipulated in the contract.

2. The expiration of the period of the notice to be given for the conclusion of the contract in accordance with law, the agreement made, or the general custom of each town.

3. The nonpayment of the price agreed upon.[2]

ART. 1561. Judges of first instance who are of competent jurisdiction in accordance with rule 13 of article 63 shall take cognizance of these actions:

1. If the property involved is a commercial or manufacturing estab-

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[1] See articles 1452 to 1582 of the civil code relating to leases.

If, during the course of an action of unlawful detainer the owner himself takes possession by his own authority of the leased estate, he is obliged to indemnify the lessee for any loss he may suffer through being deprived of the use of the estate.—*Decision of May 13, 1863.*

If the action is based on one of the causes mentioned in the following article the municipal judge is competent to take cognizance of contracts of *rabassa morta.*—*Decision of April 17, 1886.*

[2] When municipal judges take cognizance of these actions, it is optional with the parties to be or not to be represented by a solicitor and lawyer, in accordance with number 2 of articles 4 and 10 of this law.

Article 11 in its second paragraph prescribes that in case the services of an attorney as well as of a solicitor are engaged, if there should be an adjudgment upon costs in favor of the persons who have engaged them, the fees and charges of neither shall be included therein.

The jurisdiction of municipal judges to take cognizance in first instance of actions of unlawful detainer is limited by this and the following article to the cases in which the action is based upon the expiration of the term agreed upon, the expiration of the period which must be granted for the termination of the contract, or upon nonpayment.—*Decision of July 9, 1884.*

As the action which the lessor can institute to recover the payment of interest due and to demand an ejectment for nonpayment are different, the institution of one before the other does not signify nor can it signify that he renounces the ejectment.—*Decision of November 13, 1884.*

When no contract exists the term of which can have expired and in which a price has been fixed, the judge of first instance only has jurisdiction to take cognizance of the action of unlawful detainer.—*Decision of September 29, 1887.*

lishment, or a rural estate, the lease of which exceeds 5,000 pesetas per annum, even though the action is based on one of the causes mentioned in the foregoing article.

2. If the action with regard to property of any kind is based upon a cause not included in the said article.[1]

ART. 1562. All persons legally entitled to the possession of the estate either as owners, beneficiaries, or by virtue of another title which gives them the right to enjoy the estate, and their representatives, shall be considered legal parties to institute an action of unlawful detainer.

ART. 1563. An action of unlawful detainer may be instituted against—

1. Tenants.

2. Managers, custodians, keepers, or watchmen entrusted by landlords with their property.

3. Tenants at sufferance, or any other persons enjoying the estate, whether rural or urban, without paying rent therefor, provided that one month's notice to vacate has been served upon them.[2]

ART. 1564. In no case shall the plaintiff be allowed to interpose an ordinary appeal or an appeal for annulment of judgment when it lies, if he does not prove at the time he interposes said appeal that he has paid the rent due and that which, in accordance with the contract, he is to pay in advance, or that the amount of the same has been deposited in the inferior or superior court.

In such case the plaintiff shall be required to receive the amount of such rent and to issue a receipt to the tenant, and if he should not desire to accept the same, it shall be deposited in the proper public establishment.

The payment of the rent shall be proven with the receipt of the landlord, or of his manager or representative.[3]

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[1] Municipal judges can only take cognizance of actions of unlawful detainer when any of the causes specially enumerated in article 1560 is attendant, and in all other cases the judges of first instance are of competent jurisdiction, in accordance with the provisions contained in article 1561.—*Decision of January 24, 1888.*

[2] An action of unlawful detainer lies only in leases for the purpose of dispossessing a tenant who is included in the cases of the law.—*Decision of September 27, 1875.*

A legal error is incurred by a judgment which does not admit an action of unlawful detainer instituted by the person who appears the owner of the estate, against a tenant thereof at sufferance, considering exceptions pleaded by said tenant for the purpose of ignoring the right of ownership of the plaintiff.—*Decision of April 21, 1884.*

After an insolvent has been deprived of the use and disposal of his property, his tenancy thereof is at sufferance and an action of unlawful detainer lies.—*Decision of October 30, 1885.*

[3] These appeals do not lie when the decision unfavorable to the defendant becomes final, on account of his not having deposited the rental for the time due and which is to fall due during the course of the proceedings of said appeal.—*Decision of February 9, 1885.*

This article has been amended by order No. 92, of June 29, 1899, for Cuba, which see in appendix.

ART. 1565. If the tenant does not comply with the provisions of the foregoing article, the decision shall be considered final and its execution shall be proceeded with.

The appeal for annulment of judgment taken by the tenant shall also be dismissed, at any stage thereof, if during the pendency of the same he should fail to pay the installments which may fall due or which he may be required to pay in advance.

ART. 1566. None of the periods of time prescribed in this title for the hearing and determination of actions of unlawful detainer and the execution of the judgment can be extended, and after they have expired any right which may not have been utilized shall be considered lost, without the necessity of petitions for judicial compulsion nor of entering default.

ART. 1567. Judges of first instance shall observe the provisions established for audiencias in title 21 of this book, with regard to the preparation and admission, in a proper case, of appeals for annulment of judgment which the parties may desire to take against the judgments rendered by them in actions of this kind.

SECTION II.—*Actions of unlawful detainer before municipal courts.*

ART. 1568. In cases in which, in accordance with the provisions of article 1560, it pertains to municipal judges to take cognizance in original instance of actions of unlawful detainer, this action shall be heard and determined in accordance with the procedure established for oral actions, with the modifications contained in the following articles.

ART. 1569. The plaintiff shall draft his complaint in accordance with the provisions of article 719, attaching the copy or copies prescribed therein.[1]

ART. 1570. After the presentation of these documents, the judge shall order the plaintiff and the defendant to be summoned for the oral action, fixing a day and hour therefor, which can not be changed without sufficient cause being alleged and approved by the judge.

Such day must be within the six days following the presentation of the documents, but at least three days must intervene between the action and the citation of the defendant.[2]

The writ of citation for the appearance shall be drafted immediately after the copy of the complaint, which shall be delivered to the defendant in the manner prescribed in article 721.

ART. 1571. The citation shall be served upon the plaintiff in person. If such service can not be made after it has been twice attempted at

[1] A part owner can not by himself, and without the authority of the other part owners, bring an act on of unlawful detainer against a tenant.—*Decision of January 25, 1886.*

[2] If three days at least do not intervene, this article is violated and an appeal lies.—*Decision of February 6, 1886.*

an interval of six hours, the writ citing him for the action shall be left at his residence; it shall be delivered to his nearest relative, or to a member of his household or a servant, over 14 years of age, who may be found in the same; and if no one should be found, to his nearest neighbor.

At the same time an ordinary copy of the complaint shall be delivered to the defendant or to the person to whom the writ of citation is delivered.

ART. 1572. If the defendant is not found at the place where the action is pending, or should he not have his domicile there, the citation shall be delivered to his attorney in fact; if he should not have one, to the person entrusted in his name with the care of the property, and if there should be no such person the proper letters rogatory, or order for his citation, shall be issued to the judge of his town or residence.

In the latter case, the judge shall allow a sufficient time, in view of the distances and difficulties of communication, for the appearance in the oral action. This period can not exceed one day for every 30 kilometers, without the total period allowed for appearance exceeding twenty days.

ART. 1573. In the cases referred to in the foregoing articles the defendant shall be warned when he is cited, that if he does not appear in person or through a duly empowered representative, he shall be dispossessed without a further citation or hearing.

ART. 1574. If the defendant should not have a fixed domicile or his whereabouts is unknown, the writ of citation for appearance at the oral trial shall be posted upon the bulletin board of the court, with the warning mentioned in the foregoing article.

ART. 1575. If a defendant who is at the place where the action is pending should not appear at the hour fixed, he shall be cited again in the same manner for the following day, and he shall be warned at the time of the second service if he should be found, or otherwise in the writ left for him, that if he should not appear in the action, it shall be considered that he agrees to the dispossession, and he shall be ejected from the estate without any further citation or hearing.

The second citation need not be served upon absentees.

ART. 1576. If the defendant should not appear after the second citation, when he is found at the place where the action is pending, or an absent defendant, after the first citation, the judge shall immediately render judgment ordering the dispossession and warning the defendant that if he does not vacate the premises within the proper period of those mentioned in article 1594, he will be ejected therefrom.

ART. 1577. If the parties appear at the oral trial they may, in their order, make the statements and offer the testimony which they may deem proper at the time thereof.

After all the evidence considered pertinent has been admitted, it shall be taken within the period fixed by the judge, which can not exceed six days.

When the action of unlawful detainer is based upon the nonpayment of the price stipulated, no other evidence but judicial confession shall be admissible, or the document or receipt showing that said payment has been made.

ART. 1578. Upon the day following the taking of evidence it shall be attached to the record and the judge shall cite the parties for the continuation of the oral action on the following day, when he shall hear them or the person they may select to speak in their name, a statement of which shall be entered upon the record.

ART. 1579. The judge, within the three days following the termination of the oral action, shall render judgment granting or disallowing the prayer for dispossession, and in the former case warning the defendant that he will be ejected if he does not vacate the premises within the periods established in article 1594.

Notice of this judgment shall be given to the defendant either in person or by writ, if he should reside at the place where the action was held. In other cases said notice shall be posted upon the bulletin board of the court room, and it shall have the same effect as if it had been personally served.

ART. 1580. The judgment shall include the taxation of costs against the unsuccessful party.[1]

ART. 1581. The judgment may be appealed from, both for review and for a stay of proceedings, to the judge of first instance of the judicial district within three days, either by petition or by personally appearing for the purpose.

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[1] Leases are considered as extended for one year under the same conditions, when the lessee remains for three or more days on a rural estate, with the consent of the owner, after the time fixed in the contract. During this extension the owner is obliged to leave the lessee in the enjoyment of the thing leased, or indemnify him for the losses and damages which he may cause him and even for the profits he may have caused him to lose.—*Decision of December 26, 1869.*

A person who sells a leased estate before the expiration of the lease, is obliged to sustain or to indemnify the lessee for the losses and damages he may suffer by the dispossession.—*Decision of July 1, 1870.*

The proceedings for dispossession in municipal courts include an express adjudgment upon costs against the unsuccessful party, for which reason, the court of first instance, when he takes the place of the municipal judge, must, in reversing the judgment of the latter, impose the costs incurred in the last court upon the appellant. But as this precept does not apply to the proceedings held before the court of first instance, the appellee must not be taxed the costs.—*Decision of September 27, 1886.*

The provisions contained in article 1580 of the law relate clearly to the costs of the first instance, that is to say to those incurred before the municipal court, and does not apply to the costs of the second instance, which are governed by law 2, title 19, book 11, of the *Novísima Recopilación.*

If the appeal should have been taken by the defendant, the judge shall not admit it if he should not have complied with the provisions of article 1564.

ART. 1582. After the appeal has been allowed, the record shall be sent within twenty-four hours to the judge of first instance of the judicial district, with a summons of the parties to appear within eight days, if they should desire to do so, in order to allege their rights.

ART. 1583. If the appellant should not appear within said period the judge shall *ex officio* proceed as prescribed in article 733.

If he should appear in time, a record shall be made thereof, and the judge of first instance shall, without delay, order that the parties be cited to appear within three days.

This citation shall be personally served upon those who may have appeared in the second instance, and upon the others by posting the same upon the bulletin board of the court.[1]

ART. 1584. Upon the day and hour fixed for the appearance, the judge shall hear the parties or their solicitors, if they should appear, minutes of said hearing being made; and without admitting any other evidence than that which, having been submitted in the first instance could not be taken, he shall render judgment within three days thereafter.

ART. 1585. Against the judgment in second instance referred to in the foregoing article, no other appeal shall lie but an appeal for annulment of judgment for breach of law and form, if the annual rent of the estate involved should exceed 5,000 pesetas. Should it not exceed this sum, an appeal for annulment of judgment by reason of breach of form only shall be proper.[2]

ART. 1586. Upon the expiration of the legal period without the interposition or preparation of the appeal for annulment of judgment, the records of the proceedings shall be returned to the municipal court with an abstract of the judgment for its execution.

SECTION III.—*Actions of unlawful detainer before courts of first instance.*

ART. 1587. When the action of unlawful detainer is based upon one of the causes and is brought for one of the reasons mentioned in subdivision 1 of article 1561, it shall be heard and determined in an oral action according to the same procedure which is prescribed in the

[1] After the parties have been cited for appearance before the court as prescribed in article 1585 of the law of civil procedure, the judge in afterwards rendering judgment without a citation of the same, has not violated any legal provisions whatsoever, because the law does not require a previous citation for judgment in proceedings of unlawful detainer held before municipal judges.—*Decision of February 9, 1885.*

[2] In an appeal against a judgment rendered in an action of unlawful detainer it is necessary to present the document which shows the payment of the rent or the deposit thereof.—*Decision of October 9, 1883.*

foregoing section for those held before municipal judges, without any other modifications but the following:

1. The complaint shall be submitted in writing upon the proper stamped paper, and drafted in accordance with the form prescribed for complaints in ordinary actions.

2. The oral trial shall be held within eight days following that on which the complaint was presented, but four days at least must intervene between the holding of said trial and the citation of the defendant.

ART. 1588. When the complaint is based upon the violation of any of the conditions stipulated in the lease contract, not included in those mentioned in article 1560, it shall also be heard and decided in an oral trial before the judge of first instance, in accordance with the provisions contained in the preceding article.

ART. 1589. The judgment rendered by the judge of first instance in the cases referred to in the two preceding articles may be appealed from for review and for a stay of proceedings.

After the appeal has been allowed, provided that the requisites prescribed in article 1564 have been observed, if the defendant has taken the appeal, the record of proceedings shall be forwarded without delay to the appellate court, at the cost of the appellant, with a summons of the parties to appear within a period of ten days.

ART. 1590. The appeal shall be heard and determined in these cases in accordance with the procedure established by articles 704 *et seq.* for appeals in actions of lesser import.

ART. 1591. When the action of unlawful detainer is based upon any cause other than those mentioned in articles 1560 and 1588, the judge of first instance shall also cite the parties to appear at an oral trial, the provisions contained in article 1587 being observed.

If upon the appearance of the defendant he and the plaintiff should agree as to the facts, the judge shall render judgment without further proceedings, and shall order the dispossession if he considers it proper.

Should the defendant not appear, he shall be considered to agree to the facts stated in the complaint, and the said judgment shall be rendered in his default.

This judgment may be appealed from both for review and for a stay of proceedings, and the provisions of the two preceding articles shall be applied.

ART. 1592. In the case of the foregoing article, if the defendant should oppose the dispossession in the oral trial and should deny the allegations of the complaint, he shall make a statement of his denials and of the reasons upon which they are based.

After such statement is entered in the record, the judge shall close the proceedings and shall refer the complaint to the defendant for a

period of six days, the action being continued thereafter according to the proceedings and with the remedies established for incidental issues.

SECTION IV.—*Execution of judgments in actions of unlawful detainer.*

ART. 1593. Judgments rendered in actions of unlawful detainer shall be executed by the judge who has taken cognizance of said action in first instance.

The appeals taken during the execution shall be admitted for a review of the proceedings only.

ART. 1594. As soon as the judgment ordering the dispossession is final, and after the record has been received by the lower court in case of an appeal, the execution thereof shall be proceeded with at the instance of the plaintiff, and the judge shall order that the defendant be admonished that he shall be ejected from the premises if he does not vacate the same within the following periods of time:

In eight days, if a residence is involved, actually occupied by the defendant or his family.

In fifteen days, if a commercial, manufacturing, traffic, or recreation establishment is involved.

In twenty days, if a farm or other rural property is involved which contains farm buildings, and at which guards, overseers, or other servants are constantly employed.

ART. 1595. If the dispossession should relate to a rural estate not possessing any of the conditions mentioned in the last paragraph of the foregoing article, or to a residence not occupied by the defendant or by his family, the ejectment shall take place at once.

ART. 1596. The order for the execution of the judgment and the ejectment, in a proper case, shall be served upon the defendant in the same manner as was the citation, if he should be at the place where the action is pending.

In other cases the service shall be made by posting the same upon the bulletin board of the court, and it will have the same effects as if it had been personally served.

ART. 1597. After the period respectively prescribed in article 1594 has elapsed without the tenant having vacated the premises, he shall be ejected therefrom without any postponement or consideration of any kind whatsoever, and at his cost.

ART. 1598. The claims of the tenant that the workings, plantings, or any other thing which can not be removed from the estate is his property, shall not be an obstacle to the ejectment. In such case a record shall be made of the kind, extent, and conditions of the things claimed.

ART. 1599. At the time the ejectment is carried into effect sufficient salable property shall be retained and deposited which may be found

on the premises to cover the costs of the action and the subsequent proceedings which may be taxable against the defendant.

ART. 1600. There shall also be retained and seized at said act, if the plaintiff should so request, the property which may be necessary to cover the amount of the rent or lease which may be owed by the defendant, or the damages which he may have caused to the property.

This seizure shall become null *de jure*, if within the next twenty days the plaintiff does not file the proper petition requesting the ratification thereof, in accordance with the provisions for provisional seizures.

ART. 1601. If the defendant should not pay the costs at once, the sale of the property seized shall be proceeded with, after an appraisement thereof by the expert or experts which the judge shall appoint.

The alienation shall be made in the manner prescribed for proceedings for judicial compulsion in executory actions.

ART. 1602. In the cases in which the defendant shall have claimed workings, plantings, or anything else which may have remained on the estate, the appraisement thereof shall be made by experts appointed in the manner prescribed for the appraisal of property in executory actions.

ART. 1603. After said appraisement has been made, the defendant may request that he be credited with the amount at which the property was appraised which he believes himself entitled to.

ART. 1604. If the defendant should limit his claim to the amount of the appraisal, and said amount should not exceed 1,000 pesetas, the municipal judge who took cognizance of the action of unlawful detainer shall take cognizance thereof in an oral trial.

Otherwise the judge of first instance of the judicial district shall also also take cognizance thereof in an oral trial.

ART. 1605. In the other two cases referred to in the foregoing article, the oral trial shall be held in the manner prescribed for the action of unlawful detainer.

The judgment rendered at first instance may be appealed from both for review and for a stay of proceedings, which appeal shall be heard and determined in the manner established for appeals in said action in this title.

ART. 1606. If the lessee should extend his claim to include an indemnification for losses and damages or improvements, not included among those mentioned in article 1602, this claim can not be heard and determined according to the procedure established in the foregoing articles, and he shall reserve his right to institute the proper action.

TITLE XVIII.

TEMPORARY MAINTENANCE.[1]

ART. 1607. A person who considers himself entitled to demand provisional maintenance must present with his complaint the documentary evidence establishing his right thereto.

If his right should be one granted him by law, the documents shall be presented which prove the degree of relationship between the plaintiff and the defendant, or the circumstances which establish the right to said maintenance, and an offer shall be made to complete the proof by the evidence of witnesses, if it should be necessary.

He shall also offer to prove the approximate value of the estate, income, salaries, or pensions which the defendant owns or enjoys, and the necessities of the plaintiff.

In addition copies shall be attached thereto, drafted on ordinary paper,[2] of the complaint and of the documents.

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[1] The law of 1855 considered the granting of provisional maintenance as an act of voluntary jurisdiction, but at the present time it is properly the object of a contentious proceeding, although brief. Formerly an appeal for annulment of judgment was not allowed from decisions rendered in proceedings of this character. (*Decisions of June 14, 1865, October 22, 1866, and June 8, 1869.*) But it is authorized at the present time by article 1688, subdivision 3, of the law of civil procedure.

[2] A person renouncing his right to an inheritance can not afterwards base a claim for maintenance thereon.—*Decision of November 29, 1886.*

A person who does not prove his character of a natural child can not found a claim for maintenance thereon.—*Decision of November 29, 1886.*

The provisions relating to natural maintenance can not be applied to the civil, which is to be furnished in accordance with the obligation contracted.—*Decision of January 15, 1866.*

The obligation to furnish maintenance does not extinguish by the mere renunciation of the person who is to receive the same. Therefore, a deed executed by a married woman separated from her husband binding herself not to demand maintenance is of no effect.—*Decision of May 7, 1870.*

Upon the death of the husband, his obligation to furnish maintenance to his wife is extinguished.—*Decision of July 9, 1874.*

In accordance with this article (article 1210 of the repealed law), in order to decree provisional maintenance to the person who is entitled thereto, it is necessary, among other circumstances, that the right by virtue of which it is requested be properly proven. Therefore, when the person requesting the same by reason of being a natural son does not prove that he is such, although he presents witnesses to corroborate his statements, it is only proven that the defendant for sometime after the birth of the minor visited his mother at night time, and which is not considered sufficient to prove, in the full manner required by law, paternity not acknowledged either expressly or impliedly, by acts which do not leave room for doubt.—*Decision of November 28, 1881.*

One of the essential facts which must appear in order that provisional maintenance may be granted, is the necessity of the person requesting it, or what is the same thing, that he can not secure enough to support himself.—*Decision of April 16, 1883.*

The provisions of article 77 of the law relating to civil marriage are subordinated to

ART. 1608. The judge shall not admit the complaint if the copies mentioned in the foregoing article are not attached.

ART. 1609. After the complaint has been presented in due form, the judge shall order the parties to be called to appear in an oral action, which shall be held in accordance with the provisions prescribed for summary proceedings to retain or recover possession of property, in which such evidence as the parties may offer with regard to the matters referred to in article 1607, and not proven by the documents attached to the complaint, shall be admitted.

ART. 1610. This hearing shall take place within five days after the presentation of the complaint, if both parties should be at the place where the action is pending, and this period shall be extended one day for every 30 kilometers which the defendant may be distant, to be counted from the day on which the citation is made. The period of time mentioned can not exceed ten days, for which purpose the defendant shall be admonished that if he does not appear within the period fixed, the actions shall be continued without any further citation and without giving him a hearing.

A copy of the complaint and of the documents shall be delivered to the defendant at the time the citation for the hearing is served upon him.

ART. 1611. The defendant may, at the hearing and in no other manner, oppose the right to maintenance pleaded by the plaintiff, or deny the obligation either to furnish the same or the amount requested by the former.

The proper record shall be made of the result of the hearing, and the documents which the parties may have presented shall be attached to the record.

ART. 1612. Within three days after the conclusion of the hearing the judge shall render judgment.

If the judgment should order the payment of an allowance for maintenance, the amount thereof shall be temporarily determined until the amount is finally fixed in the proper declaratory action, if any of the parties should institute it, and it shall be stipulated that the payment is to be made monthly in advance.

ART. 1613. The judgment in which the maintenance is denied may be appealed from both for a review and for a stay of proceedings; judgments granting it may be appealed from for review only.

In the latter case the original records shall be forwarded to the appellate court, and there shall remain in the lower court a certified copy of the judgment for its execution, in accordance with the provisions of article 390.

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the provisions of article 75, which, in its fourth case, prescribes that the obligation to furnish maintenance ceases when the person who is to receive the same be a brother or sister of the person to furnish it, and the necessity of the former should arise from vices or bad conduct.—*Decision of May 16, 1883.*

ART. 1614. If the person adjudged to furnish maintenance should not pay the allowance on the day on which it is due, according to the judgment, it shall be enforced according to the provisions prescribed for judicial compulsion after executory actions.

The same shall be done with regard to the monthly installments as they fall due.

ART. 1615. Whatever be the final judgment which may be rendered in these actions, it shall not give rise to the exception of *res judicata.* The parties shall always reserve the right to institute the plenary action for definite maintenance, arguing in the same, according to the procedure of the proper declaratory action, the right thereto, as well as the obligation to furnish the same and the amount of the allowance therefor, without prejudice to the payment of the sum provisionally fixed.[1]

TITLE XIX.

REDEMPTIONS (*retractos*).[2]

ART. 1616. In order that an action for redemption may be allowed it is necessary:

1. That it be instituted within nine days, counted from the date of the execution of the deed of sale.

2. That the price, if known, be deposited, and otherwise that security be furnished to do so as soon as the price becomes known.

3. That some evidence of the title upon which the redemption is based be attached to the complaint, even if not conclusive.

4. That an agreement be made, if the redemption is a vested family right (*gentilicio*), to retain the estate redeemed for a period of two years at least, unless by reason of some misfortune the party retaining the same is compelled to sell it.

5. That the cotenant bind himself not to sell his interest in the property he redeems for four years.

6. That he bind himself, if the redemption is requested by the direct or beneficial owner of the estate, not to separate the ownership and the use of the property for six years.

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[1] Against judgments with regard to provisional maintenance an appeal for annulment of judgment shall not lie, but an ordinary action may be brought.—*Decision of October 16, 1860.*

After proceedings for temporary maintenance, in which the same was denied, another action may be instituted with the same object in view.—*Decision of June 14, 1865.*

The provisions relating to natural maintenance must not be applied to civil maintenance, which is to be furnished in accordance with the obligation contracted.—*Decision of January 15, 1866.*

Judgments rendered with regard to maintenance must be executed as soon as rendered.—*Decision of February 11, 1875.*

[2] See notes to articles 431 and 460.

7. That copies be attached, drafted on ordinary paper, of the complaint and of the documents which may be presented.[1]

ART. 1617. If the person who institutes the action for redemption does not reside in the town where the instrument upon which the action is based was executed, he shall be allowed, for the purpose of instituting the action, in addition to the nine days, one day for every thirty kilometers' distance from his residence to said town.

ART. 1618. If the sale has been maliciously concealed, the period of nine days shall not begin until the day following that upon which it is shown that the plaintiff had knowledge thereof.

For said purpose, the concealment of the sale shall be considered malicious if it should not have been recorded in the registry of property at the proper time. In such case, the period shall begin from the date of the presentation of the instrument of sale in the registry.

ART. 1619. The judge shall admit the complaint and shall order the institution of proceedings for redemption, and the deposit in the public establishment provided for the purpose of the amount paid, or shall accept security therefor, under his liability, in a proper case, without prejudice to his right to alter or amend his orders during the pendency of the proceedings, after the presentation of the certificate of the proceedings to avoid litigation.[2]

ART. 1620. After the presentation of the certificate of the proceedings to avoid the suit (*acto de conciliación*), by the plaintiff, the judge shall refer the complaint to the purchaser and shall order him to be summoned, delivering to said purchaser the copies of the complaint and of the documents in the manner prescribed for ordinary actions of greater import.

ART. 1621. If the defendant should appear within the period fixed in the summons, he shall be ordered to make answer to the complaint within the period of nine days.

Should he not enter an appearance, the provisions of articles 520 and 521 shall be observed.

ART. 1622. The defendant shall state in his answer whether he agrees to the facts upon which the complaint may have been based or shall state the allegations which he denies.

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[1] The jurisprudence relating to redemption by reason of a vested family right (*gentilicio*) has been omitted, because this institution has been abolished by the civil code in force.

It is to be understood that when estates sold at public auction are involved the nine days are to be counted from the day on which the sale is judicially approved, because the right of the redeemer to bring his action begins from that moment, without his being obliged to await the execution of the deed of sale.—*Decision of July 11, 1885.*

[2] In actions for redemption the complaint may be presented without prior proceedings for a compromise being held, it being sufficient that said conciliation be attempted when the hearing is held.—*Decision of January 11, 1860.*

A copy of the answer to the complaint shall be attached thereto, which shall be delivered to the plaintiff.

ART. 1623. If the parties should agree upon the facts, the judge shall order the record to be brought before him, without further proceedings, citing the parties for judgment.

The provisions contained in article 755 shall be applicable to this case.

ART. 1624. Should the parties not agree as to the facts, evidence shall be taken in the case with regard to the facts upon which there is a disagreement, and the proceedings shall be continued until judgment is rendered, according to the procedure established for incidental issues, the provisions of articles 752 to 757, inclusive, being observed.[1]

ART. 1625. The judgment rendered may be appealed from for a review and for a stay of proceedings, and the second instance shall also be heard and determined according to the procedure prescribed for appeals from incidental issues.

ART. 1626. As soon as the judgment allowing the redemption becomes final, a record shall be made in the registry of property of the agreement entered into in any of the cases mentioned in subdivisions 4, 5, and 6 of article 1616, a mandate in duplicate to the register being issued for the purpose, which official shall return one of the copies, with a memorandum to the effect that it has been complied with, which shall be attached to the record.

ART. 1627. The purchaser defeated in the action may at any time release the plaintiff from the charge mentioned in subdivisions 4, 5, and 6 of article 1616.

ART. 1628. If the defeated purchaser should agree thereto, or upon the expiration of the period mentioned in article 1616, the judge shall issue another mandate for the cancellation of the entry of the agreement of the plaintiff made in the registry of property.

Any alienation made before the expiration of the respective period shall be null and void, and the redemption shall also be so, if said purchaser should request it.

TITLE XX.

SUMMARY PROCEEDINGS RELATING TO PROPERTY.

ART. 1629. Summary proceedings relating to property can only be instituted:

1. To acquire possession.
2. To retain or recover possession.

[1] The taking of evidence is proper even when there is an agreement upon the facts, if it should tend to prove malicious concealment.—*Decision of November 10, 1886.*

3. To prevent a new construction.

4. To prevent that damage be caused by a ruinous construction.[1]

ART. 1630. The cognizance of summary proceedings relating to property pertains exclusive to the ordinary jurisdiction.

SECTION I.—*Summary proceedings to acquire possession.*[2]

ART. 1631. In order that summary proceedings to acquire possession may be instituted, it shall be an indispensable requisite that no person be in the possession as owner or usufructuary of the property whose possession is requested.[3]

ART. 1632. A true copy of the testamentary disposition of the deceased whose property is involved in the summary proceedings shall be presented with the petition, or, if the deceased should have died intestate, the declaration of heirship made by the competent judicial authority.

ART. 1633. When the possession is to be based upon a title different from those mentioned in the foregoing article, the proceedings shall conform to the procedure established in title 14 of the first part of Book 3 of this law.

ART. 1634. The plaintiff shall request in the petition that the summary evidence of witnesses be taken for the purpose of establishing the fact that the property whose possession he claims is not in the possession of any other person either as owner or usufructuary.

ART. 1635. After the evidence referred to in the foregoing article has been taken, the judge shall render a decision granting the possession requested, without prejudice to the better right of a third person, or refusing to grant the same.

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[1] Orders issued in summary proceedings relating to property are not final, nor do they produce the exception of *res judicata.—Decision of June 14, 1864.*

The provisions contained in this title are not applicable to ordinary actions.—*Decision of June 6, 1865.*

[2] See article 446 of the Civil Code.

[3] In accordance with article 694 of the former law, in order that summary proceedings to acquire possession could be instituted, it was necessary to present a sufficient title to acquire the possession, and that no person was in possession of the property involved as an owner or usufructuary. At the present time these proceedings can be instituted only by virtue of testamentary or intestate heirship of the property the possession of which is requested. And if it should be desired to acquire the possession by virtue of another title it will be necessary to prove the same and the entry thereof in the registry of property in accordance with article 2056. The supreme court had already established that a decision rendered in summary proceedings granting the possession of a thing, in accordance with articles 694 to 700 of the law of civil procedure of 1855, can be opposed only by the person prejudiced thereby, according to the means established by articles 702 *et seq.* (1642 *et seq.* of the new law), without it being permissible in any case to institute against this possession summary proceedings to recover possession, not even by the person having a legitimate title and true possession.—*Decision of February 5, 1870.*

The decision refusing to grant possession may be appealed from for review and for a stay of proceedings.

ART. 1636. After the decision granting the possession has been rendered, possession shall be given to any of the property in question, in the name of all the other property, by a bailiff, who shall be granted a commission for the purpose, and before the court clerk.

The said court clerk shall issue the necessary notices to the lessees, tenants, depositaries, or administrators of the other property, in order that they may acknowledge the new possessor, who, at once or later, may designate the persons upon whom said notices are to be served.

ART. 1637. The person who shall have obtained possession shall be given, if he requests it, a transcript of the decision granting the possession and of the proceedings had for the fulfillment of said decision.

ART. 1638. After the possession has been given, the judge shall order that the decision granting the same be published by edicts, which shall be posted at the customary places of the town where the court is situated, and they shall be inserted in the official bulletins of the province, where there are such, or, in their absence, in the *Gaceta* of the General Government.[1]

ART. 1639. After the expiration of forty days from the date of the publication of the decision in accordance with the provisions of the foregoing article, if no person should appear and claim the property, the person who has acquired possession shall be confirmed therein, and no claim against possession shall be allowed thereafter. An action *in rem* shall be the only remedy left to the person who believes himself injured, and during the course of this action the person who has acquired possession must be maintained therein.[2]

ART. 1640. Objections made to the possession during the aforementioned period shall be attached to the record, and upon the expiration of forty days it shall be delivered to the person who has obtained possession, in order that he may make answer thereto or state what he may deem proper within six days, upon the expiration of which the record shall be recovered without the necessity of judicial compulsion.

ART. 1641. After the document referred to in the foregoing article has been presented, to which there shall be attached as many copies as there may be claimants, or after the record has been recovered, the judge shall issue an order ordering that said copies be delivered to the persons mentioned and that the parties be cited to appear at an oral action, for the holding of which the nearest day possible shall be fixed.

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[1] The decision referred to need not be made public in any other manner than that specified.—*Decision of March 4, 1887.*

[2] In no manner whatsoever is the benefit of restitution *in integrum* proper in this case, for the purpose of annulling the decision granting the possession, because the prejudice, if there has been any, may be corrected by an ordinary action.—*Decisions of January 14, 1864, and others.*

ART. 1642. The counsel for the parties may appear at the oral action.

After the petitioners, in their order, have presented their claim to the property, and after the person who has obtained possession has answered them, both parties shall submit the evidence which they may deem proper, and which may be depositions, documents, or of witnesses. After the judge has admitted such evidence as he considers pertinent it shall be heard at once and the documents shall be attached to the record.

A record of the result of the proceedings shall be drafted, which shall be signed by the judge, the persons interested, the witnesses who may have been examined, and the court clerk.

ART. 1643. If any of the evidence submitted and allowed should have to be taken beyond the place where the proceedings are being held, the judge shall issue the orders which may be proper for the purpose, and may continue the action to the nearest possible date.

ART. 1644. Upon the conclusion of the oral action, and within the three days following, the judge shall render judgment in which he shall confirm the possession of the party who has obtained it, or grant it to the claimant having a better right thereto, together with all its consequences, and annul that formerly granted.

In the latter case, if it should appear that the person who instituted the summary proceedings should have acted with fraud, he shall be adjudged to pay the costs and to indemnify any losses or damages which may have been incurred.

Said judgment may be appealed from for review as well as for a stay of proceedings.[1]

ART. 1645. As soon as the judgment acquires a final character, the execution of its provisions shall be proceeded with.

When by virtue thereof possession is to be given to the claimant it shall be carried out in the manner prescribed in article 1636.

ART. 1646. If there should be an adjudgment upon costs, the costs shall at once be taxed and approved.

ART. 1647. If there should be an adjudgment of profits or losses and damages, the amount thereof shall be fixed in an oral action, in which the judge, taking into consideration the allegations of the parties and the evidence they submit, shall determine the amount to be paid.

There shall be no remedy whatsoever against this declaration, the

[1]The indemnification of losses and damages is governed by this article and the citation for the purpose thereof and of annulment of judgment, of Law 39, Title 28, Partida 3, is not proper.—*Decision of October 7, 1882.*

If a person has been deprived of the possession of his property by reason of the summary proceedings instituted by the administrator of another estate without the consent of the latter, this lack of consent does not prevent that when restitution to the first person is decreed in a declaratory action, the payment of losses and damages with all its consequences be ordered.—*Decision of July 8, 1885.*

parties reserving their rights to present in an ordinary action the claims which they may deem proper.

ART. 1648. After the amount of the costs, profits, or losses and damages is known, they shall be recovered in the manner prescribed in the proceedings for judicial compulsion after an executory action.

SECTION II.—*Summary proceedings to retain or recover possession.*[1]

ART. 1649. Summary proceedings to retain or recover possession shall lie when the person who is in possession or in the tenancy of a thing has been disturbed therein by acts that show the intention of molesting or dispossessing said party, or when said party has already been disseized of his possession or tenancy.[2]

ART. 1650. In the complaint, to which shall be attached a copy drafted on ordinary paper, evidence shall be offered to prove:

1. That the claimant or his representative is in the possession or tenancy of the property.

2. That he has been molested or disturbed in said possession or tenancy, or that he has good reasons to believe that he will be so molested or disturbed, or that he has been deprived of said possession or tenancy. There shall be clearly and precisely stated the overt acts of said disturbance, or of the attempt to commit said disturbance, or of the dispossession, and the plaintiff shall state, furthermore, whether the acts were committed by the defendant, or by some other person at the instance of said defendant.

ART. 1651. The judge shall admit the complaint and order that evidence be taken, if it shall appear that said complaint was presented

[1] See articles 446 and 1968, subdivision 1, of the Civil Code.

[2] The judge of competent jurisdiction in summary proceedings to retain possession is the judge of the place where the property involved is situated.—*Decision of January 5, 1872.*

For the purposes of these summary proceedings quasi possession is included in the word possession.—*Decision of December 31, 1879.*

Ayuntamientos may confirm the possession of public easements belonging to the municipalities, provided that one year and a day have not elapsed since the disturbance of possession.—*Decision of February 8, 1873.*

This law has abolished the difference of procedure between summary proceedings to recover and to retain possession, to which the former law devoted two distinct sections; and it orders, furthermore, that the person causing the dispossession be cited and heard before a decision is rendered. This prescription is very just, and renders null the power granted to the plaintiff to demand and obtain a decision in the summary proceedings to recover possession without hearing the defendant, in which case it could not be said that Law 2, Title XXXIV, Book 11, of the *Novísima Recopilación* had been violated.—*Decision of March 3, 1880.*

Lessees defend themselves in their own right when they institute summary proceedings against the persons who, instead of making use of legal measures, violently dispossess them from the tenancy of leased estates; and, therefore, the personal capacity necessary to institute said proceedings can not be denied them.—*Decision of June 25, 1880.*

before the expiration of one year from the date of the commission of the acts which are the cause of said complaint.

If the complaint should be presented after said period, the judge shall declare that said complaint can not be admitted, but shall reserve to the plaintiff the right to exercise his cause of action in the action which may be proper.

This ruling may be appealed from both for review and for a stay of proceedings, and after the appeal has been allowed the record of proceedings shall be transmitted to the superior court with a summons only of the person who may have instituted the summary proceedings.

ART. 1652. If the testimony should establish the two issues referred to in article 1650, the judge shall order the parties to be cited to appear in an oral action, for the hearing of which he shall set a day and hour within the eight days following; but three days, at least, must intervene between the hearing and the citation of the defendant, to whom a copy of the complaint shall be delivered at the time the citation is served upon him.

ART. 1653. The defendant shall not be allowed to file any petition the purpose of which is to impugn the complaint or any claim which may delay the hearing of the action.

ART. 1654. For the hearing of the oral action the provisions of articles 1642 *et seq.* shall be observed, and it shall be held, even if the defendant should fail to appear.

Only such evidence shall be admitted which relates to the two issues mentioned in article 1650, and the judge shall reject, subject to his personal liability, any evidence immaterial to said issues.

ART. 1655. Upon the day following the termination of the action the judge shall render judgment as to whether or not the summary proceedings are proper. Should the decision be in the negative, the plaintiff shall be adjudged to pay the costs.

The decision may be appealed from for review and for a stay of proceedings.[1]

ART. 1656. In the judgment which declares that summary proceedings lie on account of the plaintiff having been disturbed or molested in his possession or tenancy, or because he has good reason for believing that he will be so disturbed or molested, it shall be ordered that he be maintained in possession, and the disturber shall be required to abstain from committing similar acts, or others manifesting the same intention, with the warning which may be proper according to law, all the costs being imposed upon the defendant.

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[1] In summary proceedings relating to possession a citation for judgment is not necessary, because it is not established in the special procedure prescribed in the law, and the omission of such action is not, therefore, a cause for annulment.—*Decision of May 24, 1880.*

In the judgment which declares that summary proceedings are proper because the plaintiff has been dispossessed of his possession or tenancy, it shall be ordered that he be immediately revested in said possession or tenancy, and the person causing the dispossession shall be adjudged to pay all the costs, losses, and damages, and to return the profits he may have received.

In either case the judgment shall contain the clause "without prejudice to a third person," and the parties shall have all rights reserved to them which they may have with regard to the ownership or definite possession of the property, and which they may enforce in the proper action.

ART. 1657. From the judgment declaring that summary proceedings are proper an appeal lies both for a stay and review of the proceedings, after the steps ordered to maintain or revest the plaintiff in his possession have been complied with; but the execution of all other matters relating to costs and the return of profits, losses, and damages shall be held in abeyance until said judgment acquires a final character.

ART. 1658. If the judgment declaring that summary proceedings are proper should be affirmed by the superior court after the record has been returned to the lower court, the judgment shall be executed at once in regard to all matters which have been held in abeyance.

If the judgment admitting or denying the summary proceedings should be reversed, that of the superior court shall be enforced in accordance with its terms.

ART. 1659. The costs shall be taxed in the ordinary manner.

The amount of the losses and damages and of the profits shall be fixed by the judge without further remedy, according to the procedure prescribed in article 1647.

In order to collect the same, after the amount thereof has been fixed, the compulsory process established for executory actions shall be resorted to.

ART. 1660. The documents which may have been presented shall be returned to the parties requesting it upon their receipting therefor, and a memorandum shall be included in the record of their date, the makers thereof and their purpose, and, if the documents be public, of the archives in which the originals are filed.

SECTION III.—*Summary proceedings based upon a new construction.*

ART. 1661. After the complaint in summary proceedings based upon a new construction has been filed, the judge shall issue an order restraining the owner of the construction from continuing the same, under an admonition to destroy what is being built, and citing the parties interested to appear at an oral hearing upon the nearest day possible after the three days following the notification of said injunc-

tion, and to present thereat the documents upon which they base their contentions.

A copy of the complaint must be attached to the same, drafted on ordinary paper, which shall be delivered to the defendant when the citation is served upon him.[1]

ART. 1662. The injunction shall at once be served upon the owner of the construction, if he be found at the same, and otherwise upon the manager or person in charge thereof, and, in the absence of the latter, upon the workmen, in order that the labors may be suspended at once.

For the purpose of having this order complied with, a bailiff shall remain at the place where the construction is being erected until the workmen have left the same.

ART. 1663. The owner of the construction may request that he be allowed to perform such work as may be absolutely necessary to preserve whatever may have been erected. The judge shall grant said permission without hearing any arguments (*de plano*) summarily, if he deems it proper.

There shall be no remedy against this decision.

ART. 1664. The oral action shall be conducted in the manner prescribed in articles 1642 *et seq.*, the persons interested being allowed to present the documents upon which they base their respective contentions.

ART. 1665. The judge may order, in furtherance of justice, an ocular inspection of the construction, for which purpose he shall appoint an expert, if he considers it necessary.

At said inspection, which must take place within the three days following the conclusion of the oral action (unless an insuperable cause should require a greater delay), the parties interested may be present, accompanied by their counsel and by an expert of their own choice, should they deem it advisable.

The expert appointed by the judge can not be challenged, although the parties may state the reasons they have for doubting his impartiality.

The proper minutes shall be made of the action as well as of the inspection, with the results thereof, which shall be signed by all the parties present.

ART. 1666. Within the three days following the conclusion of the oral action, or the inspection, in a proper case, the judge shall render his decision.

The decision raising the injunction may be appealed from both for review and for a stay of proceedings, and that affirming the injunction may be appealed from for review only.

[1] The judgment rendered in summary proceedings based upon a new construction does not decide the question, which can be subsequently discussed in an ordinary action, relating to the right to continue the erection of the construction involved.—*Decision of November 26, 1864.*

ART. 1667. The decision ratifying the injunction shall be enforced at once, without waiting for the expiration of the period within which to appeal.

For such purpose the court clerk shall proceed to the place where the construction is being erected, and shall make a memorandum of the state, height, and other conditions of said work, admonishing the defendant that any subsequent erection will be demolished at his cost.

ART. 1668. After the proceedings mentioned in the foregoing article have been fulfilled, if the judgment should be appealed from, the record of the proceedings shall be forwarded to the audiencia with the proper service of summons upon the parties.

ART. 1669. As soon as the judgment ratifying the suspension becomes final, the owner of the construction may request that the right to continue said work be adjudged to him.

This petition shall be heard and determined according to the procedure prescribed for the proper declaratory action, and shall be referred to the person who instituted the summary proceedings, without the necessity of a summons, nor of proceedings to avoid litigation (*acto de conciliación.*)

ART. 1670. The owner may also request that he be authorized to continue the construction, on account of the serious losses which he suffers through the suspension thereof, giving security to answer for the demolition of the construction and for the indemnification of losses and damages, should he be adjudged to pay the same.

This petition shall not be admitted, unless filed at or after the time of the presentation of the main petition referred to in the foregoing article.

ART. 1671. The incidental petition requesting authority to continue the construction shall be heard and determined in accordance with the procedure prescribed for incidental issues, in a separate record or in the same main record, at the election of the petitioner.

ART. 1672. The judge shall grant the authority to continue the construction if, in his opinion, serious losses would be suffered by the suspension thereof.

A decision denying said authority may be appealed from both for review and a stay of proceedings.

The decision granting it may be appealed from for review only, and it shall be executed as soon as the owner of the construction furnishes the security mentioned in article 1670, to the satisfaction of the judge.

ART. 1673. The person who has instituted the summary proceedings may, in the proper declaratory action, assert such rights as he may consider himself entitled to for the purpose of securing the demolition of the construction, if the decision rendered should have been adverse to his claims, or to demand the demolition of what has been previously erected, if the injunction should have been made final.

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SECTION IV.—*Summary proceedings against ruinous constructions.*

ART. 1674. Summary proceedings against ruinous constructions may have two objects:

1. The adoption of urgent measures of precaution for the purpose of avoiding the dangers which may arise from the bad condition of some building, tree, column, or any other similar object, the fall of which may cause injury to persons or property.

2. The total or partial demolition of a ruinous construction.

ART. 1675. Said proceedings may be instituted only by—

1. Persons owning contiguous or adjoining property, which may be damaged or injured by such ruinous construction.

2. Persons who are under the necessity of passing in the immediate vicinity of the building, tree, or construction, liable to cause injury.

ART. 1676. By necessity is understood, for the purposes of the foregoing article, that which, in the opinion of the judge, cannot be abandoned without depriving the complainant of the exercise of a right, or injure his interests, or serious inconvenience.

ART. 1677. If the object of the summary proceedings should be the adoption of urgent measures for securing safety, the judge shall order an examination of that which is threatening to collapse, which he shall immediately make in person, accompanied by the court clerk and by an expert whom he shall appoint for the purpose.

The proper minutes shall be made of the judicial inspection, in which shall be included the report of the expert, and, without delay, the judge shall render a decision ordering that the measures be taken which he may deem necessary to temporarily and promptly secure the proper safety.

The execution of these measures shall be compulsory upon the owner of the ruinous construction, his manager or agent, and, in their absence, upon the lessee or tenant, who shall have the right to deduct the amount expended from the rent or lease price. In the absence of all these persons the plaintiff shall pay the costs, and he shall be entitled to reimbursement of said costs from the owner of the construction, according to the procedure established for judicial compulsion in executory actions.

ART. 1678. The judge may deny the measures of precaution prayed for, if the urgency thereof should not be apparent from the inspection made with the expert.

ART. 1679. No appeal shall lie from the decision of the judge granting or denying the urgent measures of precaution.

ART. 1680. If the object of the summary proceedings should be the demolition of some ruinous construction, the judge shall order that the parties be summoned to appear in an oral action, with the urgency which may be required by the case, which may be attended by their respective counsel. He shall hear their allegations and witnesses, and

shall examine the documents which they may present, attaching them to the record of the proceedings.

The proper minutes shall be made of this action, which shall be subscribed by all those who have attended the same.

ART. 1681. If the judge should deem it necessary, in view of the result of the action, he may himself make an inspection of the work, accompanied by an expert whom he shall appoint for the purpose. The parties in interest may attend this inspection, if they so desire, accompanied by their counsel and by experts of their choice.

The proper minutes shall also be made of this inspection, which shall be subscribed by all those present.

ART. 1682. Within three days after the termination of the oral action, or of the inspection, in a proper case, the judge shall render judgment, which may be appealed from both for review and for a stay of proceedings.

ART. 1683. If the demolition should be ordered and the urgency thereof should appear from the action and inspection, the judge must, before transmitting the records to the audiencia, on his own motion, order and enforce the execution of the measures of precaution which he may deem necessary, including the demolition of a portion of the construction, if said demolition cannot be delayed without serious and imminent danger, observing for this purpose the provisions contained in the last paragraph of article 1677.

TITLE XXI.

APPEALS FOR ANNULMENT OF JUDGMENT.[1]

SECTION I.—*The court competent to take cognizance of appeals for annulment of judgment.*[2]

ART. 1684. The cognizance of appeals for annulment of judgment pertains exclusively to the supreme court.[3]

ART. 1685. The first chamber shall take cognizance of appeals for annulment of judgment by reason of a violation of law or legal doctrine.

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[1] See civil order No. 92, Headquarters Division of Cuba, in Appendix.

[2] See in appendix the royal decree of August 29, 1893, as well as the Cuban civil order mentioned, modifying the organization of the supreme court, thus amending a large number of the provisions of this title.

[3] An appeal for annulment of judgment does not lie from the more or less pertinent bases of judgments nor from the reservation of rights contained in the same, especially if the reservation is favorable to the appellant.—*Decision of May 14, 1884.*

The supreme court has repeatedly declared that a question not argued in the action nor decided by the judgment, cannot be the object of an appeal for annulment of judgment.—*Decision of May 19, 1884.*

An error in a judgment which consists in a simple arithmetical mistake cannot be the basis for an appeal for annulment of judgment.—*Decision of January 26, 1889.*

tion, and to present thereat the documents upon which they base their contentions.

A copy of the complaint must be attached to the same, drafted on ordinary paper, which shall be delivered to the defendant when the citation is served upon him.[1]

ART. 1662. The injunction shall at once be served upon the owner of the construction, if he be found at the same, and otherwise upon the manager or person in charge thereof, and, in the absence of the latter, upon the workmen, in order that the labors may be suspended at once.

For the purpose of having this order complied with, a bailiff shall remain at the place where the construction is being erected until the workmen have left the same.

ART. 1663. The owner of the construction may request that he be allowed to perform such work as may be absolutely necessary to preserve whatever may have been erected. The judge shall grant said permission without hearing any arguments (*de plano*) summarily, if he deems it proper.

There shall be no remedy against this decision.

ART. 1664. The oral action shall be conducted in the manner prescribed in articles 1642 *et seq.*, the persons interested being allowed to present the documents upon which they base their respective contentions.

ART. 1665. The judge may order, in furtherance of justice, an ocular inspection of the construction, for which purpose he shall appoint an expert, if he considers it necessary.

At said inspection, which must take place within the three days following the conclusion of the oral action (unless an insuperable cause should require a greater delay), the parties interested may be present, accompanied by their counsel and by an expert of their own choice, should they deem it advisable.

The expert appointed by the judge can not be challenged, although the parties may state the reasons they have for doubting his impartiality.

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The decision raising the injunction may be appealed from both for review and for a stay of proceedings, and that affirming the injunction may be appealed from for review only.

[1] The judgment rendered in summary proceedings based upon a new construction does not decide the question, which can be subsequently discussed in an ordinary action, relating to the right to continue the erection of the construction involved.—*Decision of November 26, 1864.*

ART. 1667. The decision ratifying the injunction shall be enforced at once, without waiting for the expiration of the period within which to appeal.

For such purpose the court clerk shall proceed to the place where the construction is being erected, and shall make a memorandum of the state, height, and other conditions of said work, admonishing the defendant that any subsequent erection will be demolished at his cost.

ART. 1668. After the proceedings mentioned in the foregoing article have been fulfilled, if the judgment should be appealed from, the record of the proceedings shall be forwarded to the audiencia with the proper service of summons upon the parties.

ART. 1669. As soon as the judgment ratifying the suspension becomes final, the owner of the construction may request that the right to continue said work be adjudged to him.

This petition shall be heard and determined according to the procedure prescribed for the proper declaratory action, and shall be referred to the person who instituted the summary proceedings, without the necessity of a summons, nor of proceedings to avoid litigation (*acto de conciliación.*)

ART. 1670. The owner may also request that he be authorized to continue the construction, on account of the serious losses which he suffers through the suspension thereof, giving security to answer for the demolition of the construction and for the indemnification of losses and damages, should he be adjudged to pay the same.

This petition shall not be admitted, unless filed at or after the time of the presentation of the main petition referred to in the foregoing article.

ART. 1671. The incidental petition requesting authority to continue the construction shall be heard and determined in accordance with the procedure prescribed for incidental issues, in a separate record or in the same main record, at the election of the petitioner.

ART. 1672. The judge shall grant the authority to continue the construction if, in his opinion, serious losses would be suffered by the suspension thereof.

A decision denying said authority may be appealed from both for review and a stay of proceedings.

The decision granting it may be appealed from for review only, and it shall be executed as soon as the owner of the construction furnishes the security mentioned in article 1670, to the satisfaction of the judge.

ART. 1673. The person who has instituted the summary proceedings may, in the proper declaratory action, assert such rights as he may consider himself entitled to for the purpose of securing the demolition of the construction, if the decision rendered should have been adverse to his claims, or to demand the demolition of what has been previously erected, if the injunction should have been made final.

SECTION IV.—*Summary proceedings against ruinous constructions.*

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1. Persons owning contiguous or adjoining property, which may be damaged or injured by such ruinous construction.

2. Persons who are under the necessity of passing in the immediate vicinity of the building, tree, or construction, liable to cause injury.

ART. 1676. By necessity is understood, for the purposes of the foregoing article, that which, in the opinion of the judge, cannot be abandoned without depriving the complainant of the exercise of a right, or injure his interests, or serious inconvenience.

ART. 1677. If the object of the summary proceedings should be the adoption of urgent measures for securing safety, the judge shall order an examination of that which is threatening to collapse, which he shall immediately make in person, accompanied by the court clerk and by an expert whom he shall appoint for the purpose.

The proper minutes shall be made of the judicial inspection, in which shall be included the report of the expert, and, without delay, the judge shall render a decision ordering that the measures be taken which he may deem necessary to temporarily and promptly secure the proper safety.

The execution of these measures shall be compulsory upon the owner of the ruinous construction, his manager or agent, and, in their absence, upon the lessee or tenant, who shall have the right to deduct the amount expended from the rent or lease price. In the absence of all these persons the plaintiff shall pay the costs, and he shall be entitled to reimbursement of said costs from the owner of the construction, according to the procedure established for judicial compulsion in executory actions.

ART. 1678. The judge may deny the measures of precaution prayed for, if the urgency thereof should not be apparent from the inspection made with the expert.

ART. 1679. No appeal shall lie from the decision of the judge granting or denying the urgent measures of precaution.

ART. 1680. If the object of the summary proceedings should be the demolition of some ruinous construction, the judge shall order that the parties be summoned to appear in an oral action, with the urgency which may be required by the case, which may be attended by their respective counsel. He shall hear their allegations and witnesses, and

shall examine the documents which they may present, attaching them to the record of the proceedings.

The proper minutes shall be made of this action, which shall be subscribed by all those who have attended the same.

ART. 1681. If the judge should deem it necessary, in view of the result of the action, he may himself make an inspection of the work, accompanied by an expert whom he shall appoint for the purpose. The parties in interest may attend this inspection, if they so desire, accompanied by their counsel and by experts of their choice.

The proper minutes shall also be made of this inspection, which shall be subscribed by all those present.

ART. 1682. Within three days after the termination of the oral action, or of the inspection, in a proper case, the judge shall render judgment, which may be appealed from both for review and for a stay of proceedings.

ART. 1683. If the demolition should be ordered and the urgency thereof should appear from the action and inspection, the judge must, before transmitting the records to the audiencia, on his own motion, order and enforce the execution of the measures of precaution which he may deem necessary, including the demolition of a portion of the construction, if said demolition cannot be delayed without serious and imminent danger, observing for this purpose the provisions contained in the last paragraph of article 1677.

TITLE XXI.

APPEALS FOR ANNULMENT OF JUDGMENT.[1]

SECTION I.—*The court competent to take cognizance of appeals for annulment of judgment.*[2]

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[1] See civil order No. 92, Headquarters Division of Cuba, in Appendix.

[2] See in appendix the royal decree of August 29, 1893, as well as the Cuban civil order mentioned, modifying the organization of the supreme court, thus amending a large number of the provisions of this title.

[3] An appeal for annulment of judgment does not lie from the more or less pertinent bases of judgments nor from the reservation of rights contained in the same, especially if the reservation is favorable to the appellant.—*Decision of May 14, 1884.*

The supreme court has repeatedly declared that a question not argued in the action nor decided by the judgment, cannot be the object of an appeal for annulment of judgment.—*Decision of May 19, 1884.*

An error in a judgment which consists in a simple arithmetical mistake cannot be the basis for an appeal for annulment of judgment.—*Decision of January 26, 1889.*

ART. 1686. The third chamber shall take cognizance and decide:

1. Upon the admission of appeals for annulment of judgment by reason of a violation of law or legal doctrine.

2. Appeals interposed for breach of form.

3. Appeals for annulment of judgment taken against decisions of amicable compounders.[1]

4. The remedies of complaint mentioned in this title.

SECTION II.—*Cases in which an appeal for annulment of judgment lies.*

ART. 1687. An appeal for annulment of judgment shall lie in the cases established in this law:

1. From final judgments rendered by audiencias.

2. From final judgments rendered by judges of the first instance in actions of unlawful detainer of which they take cognizance on appeal.

3. From judgments of amicable compounders.[2]

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[1] An appeal for annulment of judgment having been taken from an award of amicable compounders because it was rendered outside of the period fixed in the compromise, the supreme court finds the appeal based on number 3 of article 4 of the law of cassation, and annuls the judgment appealed from.—*Decision of May 13, 1880.*

The period fixed in a compromise, within which amicable compounders are to render judgment, must be computed from moment to moment, as the supreme court has repeatedly declared, and holidays can not be deducted unless an express stipulation should have been made in the contract to this effect.—*Decision of March 17, 1888.*

The supreme court annuls a judgment of arbitrators because it was not rendered within the proper period. It appears that the persons interested fixed eight days for the rendering thereof; that they authorized the arbitrators, who numbered three, to unanimously extend the period for eight more; that two of the amicable compounders did so, and that they rendered judgment within the extension. The annulment of the judgment is based upon articles 803 and 828 of the law, because the extension of the period exceeded one half that fixed in the compromise, and also because the extension was not unanimously agreed to.—*Decision of June 4, 1888.*

[2] Although in general this appeal is not allowed against decisions rendered in the execution of judgments, it lies, nevertheless, when said decisions decide new questions not included in the judgment.—*Decision of May 4, 1871.*

This appeal does not lie from a judgment affirming a taxation made for the execution of an executory action.—*Decision of May 22, 1871.*

A decision which confines itself to stating what judge is to take cognizance of an action can not be considered final for the purposes of the law.—*Decision of January 3, 1881.*

This appeal does not lie in administrative matters which are governed by special laws.—*Decision of April 19, 1882.*

An appeal for annulment of judgment does not lie against what has already been executed.—*Decision of June 30, 1886.*

A ruling which only orders that the appellant furnish the security mentioned in article 33 of said law for the payment of the costs which may be adjudged against him is not final.—*Decision of December 22, 1887.*

This appeal does not lie when the judgment appealed from was rendered in an incidental issue relating to the raising of a provisional seizure, the purpose of which was to answer for the result of the main action, whose course is not interrupted

ART. 1688. For the purposes of the foregoing article, in addition to decisions terminating an action, the following shall also be considered as final:

1. Those which, rendered upon an incidental issue or collateral matter, terminate the action and render its continuation impossible; and those which decide issues with regard to the approval of accounts of administrators of intestate and testate successions, and of trustees in insolvency proceedings in the case mentioned in article 1243.

2. Rulings which declare whether or not a litigant who has been declared in default should be heard.

3. Judgments terminating actions for temporary maintenance.

4. Those rendered in acts of voluntary jurisdiction, in the cases established by law.[1]

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thereby and which can continue until judgment is rendered.—*Decision of October 2, 1888.*

A judgment which does not decide the claim which is the object of the litigation and which reserves decision until certain requisites have been complied with, has not a final character.—*Decision of October 2, 1888.*

A ruling of an audiencia which declares that a solicitor who desires to appear in an action on behalf of one of the litigants can not be considered a party thereto, has not the character of a final decision.—*Decision of January 15, 1889.*

[1] Rulings of courts ordering the cancellation or inscription of cautionary notices relating to real property in litigation can not be considered as final judgments for the purposes of appeals for annulment of judgment.—*Decision of February 15, 1877.*

Rulings of superior courts in questions of jurisdiction are not definite for the purposes of annulment of judgments.—*Decision of February 24, 1877.*

Orders issued declaring the termination of proceedings of voluntary jurisdiction have not a definite character.—*Decision of June 23, 1877.*

An appeal for annulment of judgment is not admissible against orders issued for the execution of a judgment as they are not substantially adverse to the provisions of the same, or do not contain declarations of rights different from those contained in the judgment.—*Decision of May 17, 1877.*

A decision which grants permission to prosecute or defend as a poor person is not considered final for the purposes of annulment of judgment.—*Decision of November 15, 1877.*

A decision upon the priority of an attachment has not a final character.—*Decision of January 19, 1884.*

An appeal for annulment of judgment is an extraordinary remedy, and does not lie therefore when there are other ordinary remedies which can be utilized.—*Decision of February 25, 1884.*

A decision which admits the personal capacity of one of the parties is not of a final character, because far from rendering the action impossible it facilitates the continuation thereof.—*Decision of September 30, 1884.*

When errors in form are committed in testamentary proceedings, and the persons interested agree to and approve said proceedings, they can not be afterwards alleged for the purposes of an appeal for annulment of judgment that said proceedings were performed in violation of law.—*Decision of March 20, 1885.*

An appeal for annulment of judgment does not lie for breach of law from a ruling upon dilatory exceptions relating to jurisdiction and a *lis pendens*, because it is not considered final, and therefore not included in the provisions of article 1688 of this law.—*Decision of March 31, 1885.*

ART. 1689. An appeal for annulment of judgment must be based upon one of the following causes:

1. Violation of law or legal doctrine in the adjudging part of the decision.

2. Breach of some of the essential forms of the action.

3. The rendition of a judgment by amicable compounders outside of the period fixed in the compromise or upon a matter not submitted to their decision.[1]

ART. 1690. An appeal for annulment of judgment by reason of violation of law or of legal doctrine shall lie:

1. When the decision contains a violation, erroneous interpretation, or wrongful application of law or of legal doctrine applicable to the case at issue.[2]

2. When the judgment is not pertinent to the allegations made by the litigants at the proper time.[3]

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[1] Questions which have not been properly prepared and have not been therefore decided in the judgment can not be appealed from for annulment of judgment.—*Decisions of June 26, 1882, and March 21, 1883.*

Penal laws can not be applied in civil proceedings, and therefore a civil appeal for annulment of judgment can not be based thereon.—*Decisions of November 24, 1882, and June 12, 1885.*

It is not licit for an appellant to act against the acknowledgment of a right which has been exercised by his agent.—*Decision of May 23, 1883.*

This appeal is not admissible when a law or legal doctrine is not cited which has been violated *de jure* or *de facto* based on an authentic document.—*Decision of March 27, 1885.*

[2] An appeal for annulment of judgment can not be based upon a decision of the Supreme Court.—*Decision of July 7, 1882.*

The citation of the doctrine of the decisions of the Supreme Court is not proper when the doctrine adequate to the purpose and end invoked is not established.—*Decision of July 3, 1883.*

Laws which have not determined the judgment can not be invoked as violated, even though they should have been cited in the "*considerandos*," because it is known that no appeal for annulment of judgment lies from the latter.—*Decision of March 20, 1884.*

It is not proper to consider as violated the legal provisions which are cited in an appeal and which are upon a matter distinct from that which has served as a basis for the complaint in the action.—*Decision of March 28, 1885.*

The provisions of the law of civil procedure which have a character of mere practice can not serve as a basis for an appeal for annulment of judgment for violation of law.—*Decision of April 8, 1885.*

In order that an appeal for annulment of judgment by reason of breach of form may be taken in accordance with subdivisions 1 and 4 of article 1690, it is indispensable that the lack of summons or citation for the taking of evidence shall affect the persons who are considered parties in the action, and whose representation, therefore, has been admitted.—*Decision of May 1, 1888.*

[3] An appeal for annulment of judgment for violation of law or doctrine can not be based upon matters which have not been the subject of discussion.—*Decisions of September 28, October 14, and December 1, 1885; March 9, 1887, and others.*

It is not licit to alter questions decided in the judgment for the purposes of appeal.—*Decision of October 25, 1883.*

Appeals can not be allowed which are based upon affirmations contrary to the acts

3. When the judgment grants more than is prayed for, or does not contain any declaration upon some of the allegations made in the action at the proper time.

4. When the decision contains contradictory rulings.

5. When the decision disallows a plea of *res judicata*, provided that this exception has been pleaded in the action.

6. When, by reason of the matter at issue, there has been abuse, excess, or defect in the exercise of the jurisdiction, either taking cognizance of a matter which does not come within the jurisdiction of the court or judge, or in not taking cognizance thereof when it is his duty to do so.[1]

7. If in the consideration of evidence an error of law or of fact should have been committed, provided that the latter error is apparent from documents or authentic acts which show the evident error of the judge.[2]

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acknowledged in the proceedings by the appellant, or against the basis of the complaint.—*Decisions of February 22 and 23, 1884.*

A judgment which gives less than what is requested is not impertinent (*Decision of January 4, 1887*), although that which gives more is.—*Decision of April 29, 1887.*

[1] It is necessary to cite the law which has been violated by abuse, excess, or a defect in the exercise of jurisdiction.—*Decision of October 17, 1883.*

[2] An appeal for annulment of judgment based upon an error committed in the consideration of evidence does not lie, when it is not impugned in the manner prescribed in number 7 of article 1690 of the Law of Civil Procedure.—*Decision of November 16, 1886.*

An error of fact does not exist in the consideration of evidence apparent from authentic documents or acts, when, it being fully proven that the estates which are the subject of litigation have more than double the area which appears in the title deeds presented, the adjudging chamber, without rejecting certain evidence, without exclusively considering other evidence, after analyzing all the evidence submitted by the parties and in the furtherance of justice, comparatively considers the result of all that taken, and for the reasons which it states, forms its opinion, which can not be substituted by that of any of the litigants.—*Decision of December 22, 1886.*

According to rule 7 of article 1690 of the Law of Civil Procedure, the error of fact must be apparent from authentic documents which show the evident mistake of the judge, and the declarations of witnesses can not be considered as such for the purpose of demonstrating the error of fact, because the consideration thereof pertains exclusively to the adjudging chamber.—*Decision of April 3, 1888.*

The declarations of witnesses can not be considered as authentic acts for the purposes of an annulment of judgment, because the consideration thereof pertains exclusively to the adjudging chamber, and the admission of the same is not proper, as prescribed by rule 7 of article 1690 of the Law of Civil Procedure.—*Decision of April 23, 1888.*

The judgment rendered at first instance can not be considered as documentary evidence submitted in the action in the manner prescribed by law, when it is cited as the only basis.—*Decision of April 30, 1888.*

An appeal for annulment of judgment does not lie when the reasons alleged are based upon findings of fact which are contrary to the conclusions of the adjudging chamber in view of the evidence submitted by the parties, without the appellant, in thus considering the facts, citing any law as violated relating to the value of said evidence nor mentioning any fact which is apparent from a document or authentic act which shows the evident error of the judge, as is expressly required by subdivision

This period shall begin from the day following that of the delivery of the certificate. A memorandum of the date of delivery shall be entered at the foot of said document.

ART. 1700. If the above-mentioned certificate should be requested outside of the period prescribed in article 1698, or a certificate of decisions or rulings in the actions or incidental issues specified in articles 1692 and 1693, or of orders of mere procedure, the audiencia shall deny the same in a ruling which shall state the reasons for the denial, as well as the date of the judgment, that of the notification thereof and of the presentation of the petition requesting the certificate.

ART. 1701. A certified copy of the ruling denying the certificate of the judgment shall be given at the time of the notification to the person who may have requested it, in order that, if he deems it proper, he may appeal in complaint to the admission chamber of the supreme court, within the period of sixty days, counted from the day following that of the delivery, a memorandum of which shall be entered at the foot of the certificate.

Upon the expiration of this period there shall be no remedy whatsoever.

ART. 1702. The audiencia may order, at the instance of a party, that the proceedings be not suspended, notwithstanding the issue of the certified copy referred to in the foregoing article; but if the supreme court should allow the remedy of complaint, the proceedings shall be suspended, reserving the provisions contained in article 1784.

ART. 1703. The petitioner shall present his written complaint to the third chamber of the supreme court within the period prescribed in article 1701, accompanying the certified copy of the ruling denying the issue of the certificate.

The chamber, without further proceedings, shall render the decision which may be proper, against which there shall be no further remedy.

ART. 1704. If the party who has been denied the certificate of the judgment should have been declared a poor person, he may request that the certified copy of the ruling denying the same be sent *ex officio* to the supreme court, and may in the same instrument make the appointment of an attorney and solicitor to defend and represent him in said court.

In such case the provisions of articles 1707 *et seq.* shall be observed, a period of ten days, which can not be extended, being allowed in which to bring the remedy in complaint.

ART. 1705. If the supreme court should affirm the ruling denying the certificate, the audiencia which rendered the same shall be informed thereof for the proper legal purposes.

If the supreme court should reverse said ruling, it shall issue letters mandatory to the audiencia, commanding the issuance of the certificate requested.

ART. 1706. By the first direct mail after the date of the delivery of the certificate of the judgment to the party intending to interpose an appeal for annulment of judgment, there shall be forwarded to the supreme court:

1. A literal certified copy, authenticated by the presiding judge of the chamber which rendered judgment, of the reserved votes, if there be any, or that there were none, if such was the case.

2. The original abstract (*apuntamiento*) of the record, leaving an authenticated copy of said abstract in the record, in which copy a memorandum shall be made of the agreement of the parties to the correctness thereof.

The date of the sailing of the vessel carrying the mail to the Peninsula, and upon which the letter of transmittal of the documents above mentioned is sent, shall also be stated in the record and notified to the parties. The name of the vessel and of the company or individual owning the same shall also be stated.

ART. 1707. If the litigant requesting the certificate of the judgment should have been declared a poor person, he may in the same petition request that it be forwarded *ex officio* to the supreme court, which shall be done after the proper summonses.

Should no such request be made, the certificate shall be delivered to the petitioner for such purposes as may be legal and proper.[1]

ART. 1708. A poor litigant may also, in requesting the certificate, appoint an attorney to defend him and a solicitor to represent him before the supreme court.

Should he not make these appointments, or if the persons designated should not accept the same, they shall be appointed *ex officio*.

ART. 1709. After the certificate referred to in the foregoing article has been received by the supreme court, the admission chamber shall order, if the appellant should have appointed an attorney and a solicitor, that they be required to state whether or not they accept the defense and representation.

If they should answer in the affirmative, the certificate shall be delivered to the solicitor, in order that, within a period of twenty days, he may file the appeal for annulment of judgment.[2]

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[1] When the appellant who has been declared a poor person does not request that the certificate of the judgment to interpose the appeal be transmitted *ex officio* to the supreme court, but that it be delivered to his solicitor, the period to interpose the appeal must be counted from the date of the delivery.—*Decision of October 8, 1885.*

In the case of article 1707, the summons must be made without fixing the period of forty days or any other, because in such case the appearance and the hearing and determination of the appeal is governed by the procedure and terms prescribed in article 1709.—*Decisions of December 14 and 17, 1885, and April 28, 1886.*

[2] According to this article an appeal by reason of violation of law must be filed within the period of twenty days, which shall begin to be counted from the date following that of the notification of the order by which the delivery of the record

ART. 1710. If the person interested should not have appointed an attorney or solicitor, or if the latter should not have appeared on his behalf with a proper power of attorney, after ten days following the transmission of the certificate by the audiencia, the chamber of the supreme court shall order that the deans of the respective colleges appoint such persons whose turn it is to be given the same. The same order shall be issued if those appointed by the party interested, or any of them, should refuse to accept the appointment.

ART. 1711. After the attorney and solicitor have been appointed, the chamber shall order that a certified copy of the judgment be delivered to the latter, in order that, within the period of twenty days, he may present the appeal, authorized with the signature of the attorney.[1]

ART. 1712. If the attorney appointed by the party or *ex officio* should not consider that an appeal lies, he shall so state in writing, but without giving the reasons for his opinion, within a period of three days. In such case a new attorney shall be appointed within the two days following, and if he should concur in the opinion of the first attorney, a third one shall be appointed. The provisions affecting the first attorney shall be obligatory for the other two.

The attorney who does not return the record within three days and state his opinion that an appeal would not be well taken, is bound to file said appeal within the period prescribed in the foregoing article.[2]

ART. 1713. If the three attorneys should concur in the opinion that no appeal lies, the record shall be transmitted to the representative of

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for the purpose of preparing the appeal was ordered, and therefore an appeal filed after the termination of said period is not admissible.—*Decision of June 8, 1888.*

The period within which to interpose an appeal for annulment of judgment by reason of a violation of law, in case that the appellant appears as a poor person and the certificate of the judgment, therefore, was transmitted *ex officio*, is twenty days, counted from the date of the notification of the order, as is specifically prescribed by this article, for which reason an appeal filed outside of the aforementioned period of twenty days is not admissible according to the provisions of article 1727, subdivision 1, and article 1726.—*Decision of September 27, 1888.*

[1] After an attorney and a solicitor have been appointed *ex officio* for the appellant, as prescribed in this article, the appeal interposed can not be admitted after the expiration of the twenty days fixed for the purpose.—*Decision of November 7, 1883.*

The period of twenty days begins from the day following that on which the certificate is ordered delivered to the solicitor.—*Decisions of August 21 and December 4, 1884.*

After the certified copy of the judgment has been delivered to the counsel of the poor litigant appointed *ex officio*, it is necessary that the appeal be filed within a period of twenty days, counted from the day following that of the notification of the order which orders the delivery of the record to the solicitor; otherwise the appeal shall not be allowed.—*Decisions of January 5 and 28 and February 26, 1885.*

[2] The period of twenty days must be counted from the day following the notification of the order by which the record was ordered delivered to the solicitor, and not from the day on which an order is issued to file the appeal by reason of the record being returned outside of the legal period.—*Decision of May 13, 1886.*

the department of public prosecution, in order that he may file the appeal within a period of ten days, if he considers that said appeal legally lies; otherwise he shall return the record marked "Examined" (*visto*).

In the latter case the chamber shall declare that the appeal does not lie, and shall communicate this decision to the audiencia, returning the abstract.[1]

SECTION IV.—*Interposition and admission of an appeal for violation of law or of doctrine.*

ART. 1714. The party obtaining the certified copy of the judgment shall file the appeal for annulment of judgment in the admission chamber of the supreme court within a period of sixty days, which period shall begin to be counted from the day following that of the delivery of the certificate.

Upon the expiration of this period the judgment shall become final, and the appeal shall not be admitted even though no entry of default has been requested by the opposite party.[2]

ART. 1715. As soon as a solicitor sufficiently empowered appears, stating that he intends to file an appeal for annulment of judgment, the chamber shall order that he be considered a party to the action, and that the record, with a certificate of the reserved votes and the abstract, be delivered to him, if he should so request.[3]

ART. 1716. To the appeal shall be attached—

1. The power which shows that the solicitor is the legal representative of the party, unless he has been appointed *ex officio* or unless he has previously presented the same.[4]

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[1] The appeals for a violation of law or breach of form instituted by persons declared poor can not be interposed by an attorney appointed by the appellant when the record has already been referred to the three attorneys *ex officio* and the period for the summons has already expired, because it would be a retrogression in the proceedings.—*Decision of September 26, 1884.*

[2] An appeal signed only by the attorney and solicitor of the party and not by the party interested can not be acted upon.—*Decision of May 24, 1882.*

[3] The omission of the presentation of the power of attorney by the solicitor renders the admission of the appeal for annulment of judgment impossible, unless said solicitor has been appointed *ex officio* or has presented said power before in the same proceedings. The absence thereof can not be made good by the statement of the solicitor to the effect that his representation was proven in the proceedings had before the audiencia, because the law requires that the power of attorney be presented in the proceedings had in the appeal.—*Decision of April 10, 1886.*

[4] When some litigants are declared poor, but the solicitor who appears for them has not been appointed *ex officio* or *apud acta*, the appeal can not be allowed if the proper power of attorney executed by said parties is not presented, because their personal capacity is not proven.—*Decisions of June 22 and July 22, 1885.*

ART. 1691. An appeal for annulment of judgment by reason of a violation of the essential forms of an action, for the purposes of subdivision 2 of article 1689, lies:

1. For failure to summon, in the first or second instance, the persons who should have been cited for the action.[1]

2. For want of personal capacity in any of the parties or in the solicitor who may have represented them.[2]

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7 of article 1690, not invoked, on the other hand, by the appellant to authorize the appeal.—*Decision of May 17, 1888.*

When the appeal for annulment of judgment is based, although this is not stated, upon the consideration of the evidence made by the adjudging chamber, the citation of laws relating to points discussed in the action can not give grounds for its admission; but it is necessary to cite laws or legal doctrine with regard to the value of said evidence which constitute an error of law or of fact, apparent from documents or authentic acts, committed in said consideration, as is prescribed in subdivision 7 of article 1690 of the Law of Civil Procedure.—*Decision of October 27, 1888.*

In order that an appeal based on case 7 of article 1690 of the Law of Civil Procedure may be admissible, it is necessary that the law violated be cited relating to the value of the evidence, and the acts or documents from which the error of law or of fact is apparent.—*Decision of March 2, 1889.*

The admission of the appeal by reason of a violation of law is not proper when relating to the consideration of evidence; it is not included in the provisions of article 1690, subdivision 7, of the Law of Civil Procedure.—*Decision of May 1, 1889.*

[1] The representative of the State having been cited, there does not exist any breach of form based upon subdivision 1 of article 1691 of the Law of Civil Procedure which is invoked.—*Decision of December 16, 1886.*

According to the provisions of article 279 of this law, after the defendants have entered an appearance in the action, any lack of formality in their citation is cured, without prejudice to the disciplinary correction of the proper party; when such is the case, the failure to summon mentioned in subdivision 1 of article 1691 of said law does not exist.—*Decision of December 17, 1886.*

Two persons being bound by a contract jointly and severally, the creditor may bring his action against either of them without the failure to cite one of the parties serving as a basis for an appeal for annulment of judgment by reason of a breach of form.—*Decision of July 6, 1887.*

In order that an appeal for annulment of judgment for violation of form may be taken in accordance with number 1 of article 1691, it is necessary that one of the parties who should have been cited for the action was not summoned.

With regard to proceedings had in compulsory process, the failure to serve an order of sale can not serve as a basis for an appeal for annulment of judgment.—*Decision of November 19, 1887.*

[2] The want of personal capacity referred to in article 1691, subdivision 2, is that which arises from a deprivation of the full enjoyment of civil rights.—*Decision of September 25, 1883.*

The want of a cause of action or right to enter a complaint must not be confounded with a want of personal capacity to appear in an action, and therefore does not authorize the interposition of an appeal for violation of form.—*Decision of April 21, 1884.*

The want of personal capacity herein referred to relates to the absolute or relative legal incapacity to litigate, and not to the right by virtue of which litigation is entered into, as the supreme court has repeatedly declared.—*Decision of May 14, 1884.*

The want of personal capacity in any of the parties or in their solicitor which the

3. For failure to take evidence in any instance when it should be taken according to law.[1]

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The want of personal capacity can serve only as a basis for an appeal for annulment of judgment for a breach of form, and not by reason of a violation of law.—*Decision of February 10, 1885.*

If the personal capacity of the plaintiff has been duly proven, and the adjudging court has recognized the same without a protest on the part of the defendant, the latter can not allege the want thereof for the purposes of an appeal.—*Decision of March 24, 1885.*

There is no violation of form when the want of personal capacity has been made good by the new power of attorney presented in the proceedings and other evidence taken in the oral action.—*Decision of February 20, 1886.*

If the personal capacity of the widow in the character in which she litigates was acknowledged by a ruling in the voluntary testamentary proceedings of her husband, and recognized by the persons whom it might prejudice, said ruling has the character of a final judgment for all judicial purposes which are related to the succession to the rights and obligations of her deceased husband, and a decision to this effect does not incur the violation referred to in subdivision 2 of article 1691.—*Decision of March 7, 1887.*

The want of personal capacity in any of the parties must arise, in order that an appeal for annulment of judgment for violation of form may be interposed, from the deprivation of the full enjoyment of civil rights, such as incapacity to appear in court, in accordance with subdivision 2 of article 1691.—*Decision of April 1, 1887.*

The want of personal capacity which is determined in the second case of this article does not refer to the right under which a person litigates, but to the personal capacity to appear in court in accordance with the provisions of article 533.—*Decision of June 28, 1888.*

[1] In executory actions no other evidence is proper than that which refers to the exceptions pleaded by the debtor when he opposes the execution, and therefore the taking of evidence in the second instance is not proper in accordance with law when the defendant has been declared in default and has not objected to the execution at the proper time and in the proper manner.—*Decision of October 1, 1884.*

As prescribed in subdivision 3 of article 1691 of the law of civil procedure, the failure to take evidence can only be considered as a violation of form for the purposes of an annulment of judgment when said evidence should be taken in accordance with law.—*Decision of April 6, 1887.*

[2] Failure to issue a citation for proceedings in furtherance of justice does not constitute a violation of form.—*Decision of July 8, 1885.*

An appeal for annulment of judgment is not well taken when it is based upon subdivision 4 of article 1691 of the law of civil procedure on account of documentary evidence having been submitted without a citation of the appellant, when said evidence had been declared inefficient and was considered as not having been submitted.—*Decision of October 29, 1887.*

When the citation for judgment has been issued, even though afterwards there should be delays which rendered it necessary to suspend the period fixed by law to render judgment without said proceeding being rendered invalid, the violation of form mentioned in subdivision 4 of article 1691 of the law of civil procedure can not be pleaded.—*Decision of March 27, 1889.*

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According to the provisions of article 279 of this law, after the defendants have entered an appearance in the action, any lack of formality in their citation is cured, without prejudice to the disciplinary correction of the proper party; when such is the case, the failure to summon mentioned in subdivision 1 of article 1691 of said law does not exist.—*Decision of December 17, 1886.*

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The want of personal capacity in any of the parties must arise, in order that an appeal for annulment of judgment for violation of form may be interposed, from the deprivation of the full enjoyment of civil rights, such as incapacity to appear in court, in accordance with subdivision 2 of article 1691.—*Decision of April 1, 1887.*

The want of personal capacity which is determined in the second case of this article does not refer to the right under which a person litigates, but to the personal capacity to appear in court in accordance with the provisions of article 533.—*Decision of June 28, 1888.*

[1] In executory actions no other evidence is proper than that which refers to the exceptions pleaded by the debtor when he opposes the execution, and therefore the taking of evidence in the second instance is not proper in accordance with law when the defendant has been declared in default and has not objected to the execution at the proper time and in the proper manner.—*Decision of October 1, 1884.*

As prescribed in subdivision 3 of article 1691 of the law of civil procedure, the failure to take evidence can only be considered as a violation of form for the purposes of an annulment of judgment when said evidence should be taken in accordance with law.—*Decision of April 6, 1887.*

[2] Failure to issue a citation for proceedings in furtherance of justice does not constitute a violation of form.—*Decision of July 8, 1885.*

An appeal for annulment of judgment is not well taken when it is based upon subdivision 4 of article 1691 of the law of civil procedure on account of documentary evidence having been submitted without a citation of the appellant, when said evidence had been declared inefficient and was considered as not having been submitted.—*Decision of October 29, 1887.*

When the citation for judgment has been issued, even though afterwards there should be delays which rendered it necessary to suspend the period fixed by law to render judgment without said proceeding being rendered invalid, the violation of form mentioned in subdivision 4 of article 1691 of the law of civil procedure can not be pleaded.—*Decision of March 27, 1889.*

5. For refusal to order any proceeding for the taking of evidence, admissible according to law, and which failure may have prevented the presentation of any defense.[1]

6. By reason of a lack of competent jurisdiction, when this question has not been decided by the supreme court, and is not included in subdivision 6 of the foregoing article.[2]

7. By reason of the attendance to render judgment of one or more judges who had been challenged in due time, and for legal causes, which challenge had been allowed, or denied, when it should have been allowed.[3]

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[1] If the proceedings were not admissible, on account of the institution of an action of unlawful detainer for nonpayment, the refusal is not included in the provisions of this section.—*Decision of March 3, 1884.*

When a litigant in the second instance demands a declaration under oath of the opposite party, and presents some papers to be compared with their originals, without their having any direct relation to the point at issue, this evidence must be ruled out and, therefore, it can not serve as a basis for an appeal for annulment of judgment.—*Decision of March 24, 1885.*

In order that the refusal to institute proceedings for the taking of evidence may serve as a basis for an appeal for annulment of judgment for violation of form, it is necessary that said proceeding be admissible according to law, and that the failure thereof may have prevented the presentation of a defense.—*Decision of April 6, 1887.*

The refusal to admit documents not specially included in the cases determined by article 506 of this law does not produce the violation of form referred to in the fifth paragraph of article 1691.—*Decision of December 31, 1887.*

An audiencia which, in admitting the evidence which may have been submitted at the proper time and in the proper manner, only denied the claims with reference to other particulars which were submitted too late, because they were not formulated in the same instruments in which the taking of evidence was requested, as is prescribed in article 706 of this law, but after the presentation thereof, for which reason they were not admissible, does not incur a violation of form in refusing to admit the same.—*Decision of June 23, 1888.*

[2] When the appellant has pleaded in the first instance and again in the second instance the exception of lack of jurisdiction, an appeal lies for annulment of judgment by reason of a violation of form, because a final judgment in the matter can not be rendered without previously deciding said jurisdiction.—*Decision of July 8, 1884.*

If one of the reasons for the appeal for annulment of judgment consists in impugning the jurisdiction of the municipal judge who has taken cognizance of the proceedings, this question can not be discussed if it has already been the subject of argument before the third chamber of the supreme court.—*Decision of May 23, 1885.*

Lack of jurisdiction, by reason of the matter involved, is not the question of jurisdiction referred to in subdivision 6 of article 1691.—*Decision of July 3, 1885.*

[3] The abstract (*apuntamiento*) is not included in the documents or authentic acts referred to in article 1691, subdivision 7.—*Decisions of January 15, 1883, and April 29, 1885.*

As prescribed in articles 199 and 200 of the law of civil procedure, the judge challenged must order a separate record for the hearing of the issue of the challenge, and must abstain during the hearing and determination thereof from taking part in the proceedings of the action or in the issue; therefore, when the municipal judge, substituting the judge of first instance, not only disallows the challenge interposed

8. On account of the judgment having been rendered by a less number of judges than that prescribed by law.

ART. 1692. An appeal for annulment of judgment by reason of a violation of law or legal doctrine shall not lie—

1. In actions of lesser import.

2. In actions of unlawful detainer, when the annual rental of the estate does not exceed 5,000 pesetas.

3. In executory, possessory, and other actions in which, after their conclusion, another action can be instituted for the same cause, excepting the cases mentioned in subdivisions 3 and 4 of article 1688.

In all these actions appeals shall lie for annulment of judgment based upon a breach of any of the forms of the action mentioned in the foregoing article.[1]

ART. 1693. No appeal for annulment of judgment shall lie from rulings of audiencias in proceedings for the execution of judgments, unless substantial points are decided which are not controverted in the action nor decided in the judgment, or which are contradictory thereto.[2]

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in due time by the defendants, and based upon a legitimate cause, but proceeds to render a final judgment without awaiting the previous institution of the challenge proceedings, an appeal for annulment of judgment by reason of a violation of form may be interposed, as it is included in the case mentioned in subdivision 7 of article 1691.—*Decision of December 17, 1886.*

If in the written appeal the cases of article 1691 in which the reasons for the appeal are included are not stated, and no attempt has been made to do so, an appeal for violation of form can not be considered, even if the causes should be true and legal.—*Decisions of September 13 and November 20, 1884.*

An appeal for annulment of judgment by reason of a violation of form can be based only on one of the causes specifically mentioned in article 1691 of the law of civil procedure.—*Decision of November 23, 1884.*

[1] A judgment which confines itself to prescribing the measures necessary to execute a final judgment in accordance with the law of procedure can not be appealed from for annulment of judgment.—*Decision of February 21, 1884.*

When the judgment appealed from has been rendered in an issue incidental to an executory action, an appeal for annulment does not lie.—*Decision of September 26, 1884.*

No appeal is allowed in executory actions, and therefore it does not lie in issues incidental thereto.—*Decision of October 10, 1884.*

A decision rendered in accordance with articles 395 *et seq.* of the mortgage law which declares the ownership of some estates for the purpose of their inscription in the registery of property must not in any manner whatsoever be considered final, because another action can be instituted for the same cause.—*Decision of April 29, 1887.*

When the ruling appealed from has issued in attachment proceedings arising in an executory action, in which, as the Supreme Court has already declared, no appeal for annulment of judgment by reason of a violation of law can lie, it can not be taken in issues incidental thereto.—*Decision of October 15, 1888.*

[2] This article refers to the admission of the appeal, and can not be violated by a decision of an audiencia from which an appeal is going to be taken.—*Decision of February 5, 1886.*

When the judgment appealed from relates to the payment of a specific sum, and the proceedings have been in accordance with the provisions of articles 931 *et seq.* of

ART. 1694. In order that appeals for annulment of judgment based upon a breach of form be admitted, it is indispensable that the correction of the error shall have been requested in the instance in which it was committed; and if it should have occurred in the first instance, the request be again presented in the second, in accordance with the provisions of article 858.[1]

ART. 1695. The appeal shall lie, even though not preceded by the request mentioned in the foregoing article, provided that the violation has been committed in the second instance, when it becomes impossible to except thereagainst.

ART. 1696. A person desiring to interpose an appeal for annulment of judgment (if not declared a poor person) shall deposit 2,500 pesetas in the establishment provided for the purpose, when the judgments rendered in first and second instance conform in all points, when the appeal is based upon a violation of law or of legal doctrine, or from the decisions of amicable compounders, or from judgments rendered in acts of voluntary jurisdiction.

It shall be understood that the judgments referred to conform in all points, even though they vary in the adjudication upon costs.

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the law of civil procedure, there is no remedy whatsoever against the same, as prescribed in the last paragraph of article 943, nor is the case included in the provisions of article 1693, because it does not decide any new question nor is it contradictory.—*Decision of December 10, 1886.*

A ruling which, relating to the strict fulfillment of a final judgment, orders that the compulsory process be continued for the purpose of recovering the costs which were taxed in said judgment without prejudice to continuing the main action, is not in contradiction to the judgment rendered, nor does it decide any new point, and therefore has no final character, and an appeal for annulment of judgment does not lie.—*Decision of June 14, 1887.*

When, without considering whether the decision appealed from is definite or not, it relates to the execution of a judgment of amicable compounders, in accordance with the provisions of article 1693 of the law of civil procedure, an appeal for annulment of judgment lies only when it decides substantial questions not controverted in the action nor decided in the judgment, or which are in contradiction to the said judgment.—*Decision of April 16, 1888.*

A judgment having been rendered from which an appeal is taken in an issue incidental to the execution of a final judgment rendered by amicable compounders, an appeal for annulment of judgment does not lie thereagainst, according to article 1693 of the law of civil procedure, as it is not pleaded that it is included in any of the exceptions in which said appeal is allowed in accordance with the said article, and therefore the admission of the appeal is not proper in accordance with the provisions of subdivision 3 of article 1727 of the said law.—*Decision of June 20, 1888.*

[1] It is not sufficient to state the error; it is necessary to properly request the correction thereof.—*Decision of January 18, 1868.*

In order that an appeal for breach of form may lie, it is necessary that the correction of the error be requested in the court where it was committed.—*Decision of October 6, 1883.*

When the appellant pleaded in the first instance, and again in the second, the exception of incompetency, he complied with the requisites mentioned in this article.—*Decision of July 8, 1884.*

The deposit shall be of 1,250 pesetas when the appeal is interposed by reason of a breach of form.[1]

ART. 1697. In cases in which the amount involved is less than 5,000 pesetas, the deposit shall be limited to the sixth part of the amount thereof if the appeal which it is desired to interpose is based upon a violation of law or of legal doctrine, or should be from a decision of amicable compounders or from that rendered in acts of voluntary jurisdiction, and to one-twelfth of said amount if it were based upon a breach of form.[2]

SECTION III.—*Preparation of the appeal for annulment of judgment by reason of a violation of law or of legal doctrine.*

ART. 1698. A person who intends to interpose an appeal for annulment of judgment for violation of law or of legal doctrine shall present to the chamber which rendered judgment, within a period of ten days (which can not be extended), counted from the day following the notification thereof, a written petition setting forth his intention of interposing the appeal, and requesting that he be furnished therefor a literal copy of the judgment, as well as of that rendered in the first instance, if all or some of the *resultandos* (statements of facts) and *considerandos* (conclusions of law) thereof have been accepted and not textually reproduced by the superior court.

If ten days should elapse without said petition being presented, the judgment shall become final.[3]

ART. 1699. The audiencia shall order that the certificate be issued, provided that it shall have been requested within the period fixed in the foregoing article, and shall also order that the other parties be cited to appear before the admission chamber of the supreme court within the period of sixty days.

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[1] The judgments shall be understood to conform in all points when they vary only with regard to the adjudication upon costs, and, therefore, it is necessary that the deposit prescribed in this article be made in order that the appeal be admitted.—*Decision of October 14, 1884.*

When a person has been authorized to defend as a poor person, without prejudice to proving his right to this benefit, if he has not obtained the declaration before the interposition of the appeal, he is required to make the deposit.—*Decisions of October 11 and 16, September 22, and November 8, 1886.*

In accordance with the provisions of article 1696 of this law, it is necessary that the appellant shall have obtained a declaration of poverty in order that he be exempted from making the deposit required by the said article when the judgments rendered in the first and second instance conform in all points. It is not sufficient, therefore, that he has instituted proceedings to secure said declaration.—*Decision of June 28, 1887.*

[2] Article 1697 relates to the amount involved in the action in the first instance.—*Decision of April 28, 1885.*

[3] The period in which to interpose the appeal can not be extended and is not interrupted by a request for an elucidation of the judgment.—*Decision of February 12, 1876.*

This period shall begin from the day following that of the delivery of the certificate. A memorandum of the date of delivery shall be entered at the foot of said document.

ART. 1700. If the above-mentioned certificate should be requested outside of the period prescribed in article 1698, or a certificate of decisions or rulings in the actions or incidental issues specified in articles 1692 and 1693, or of orders of mere procedure, the audiencia shall deny the same in a ruling which shall state the reasons for the denial, as well as the date of the judgment, that of the notification thereof and of the presentation of the petition requesting the certificate.

ART. 1701. A certified copy of the ruling denying the certificate of the judgment shall be given at the time of the notification to the person who may have requested it, in order that, if he deems it proper, he may appeal in complaint to the admission chamber of the supreme court, within the period of sixty days, counted from the day following that of the delivery, a memorandum of which shall be entered at the foot of the certificate.

Upon the expiration of this period there shall be no remedy whatsoever.

ART. 1702. The audiencia may order, at the instance of a party, that the proceedings be not suspended, notwithstanding the issue of the certified copy referred to in the foregoing article; but if the supreme court should allow the remedy of complaint, the proceedings shall be suspended, reserving the provisions contained in article 1784.

ART. 1703. The petitioner shall present his written complaint to the third chamber of the supreme court within the period prescribed in article 1701, accompanying the certified copy of the ruling denying the issue of the certificate.

The chamber, without further proceedings, shall render the decision which may be proper, against which there shall be no further remedy.

ART. 1704. If the party who has been denied the certificate of the judgment should have been declared a poor person, he may request that the certified copy of the ruling denying the same be sent *ex officio* to the supreme court, and may in the same instrument make the appointment of an attorney and solicitor to defend and represent him in said court.

In such case the provisions of articles 1707 *et seq.* shall be observed, a period of ten days, which can not be extended, being allowed in which to bring the remedy in complaint.

ART. 1705. If the supreme court should affirm the ruling denying the certificate, the audiencia which rendered the same shall be informed thereof for the proper legal purposes.

If the supreme court should reverse said ruling, it shall issue letters mandatory to the audiencia, commanding the issuance of the certificate requested.

ART. 1706. By the first direct mail after the date of the delivery of the certificate of the judgment to the party intending to interpose an appeal for annulment of judgment, there shall be forwarded to the supreme court:

1. A literal certified copy, authenticated by the presiding judge of the chamber which rendered judgment, of the reserved votes, if there be any, or that there were none, if such was the case.

2. The original abstract (*apuntamiento*) of the record, leaving an authenticated copy of said abstract in the record, in which copy a memorandum shall be made of the agreement of the parties to the correctness thereof.

The date of the sailing of the vessel carrying the mail to the Peninsula, and upon which the letter of transmittal of the documents above mentioned is sent, shall also be stated in the record and notified to the parties. The name of the vessel and of the company or individual owning the same shall also be stated.

ART. 1707. If the litigant requesting the certificate of the judgment should have been declared a poor person, he may in the same petition request that it be forwarded *ex officio* to the supreme court, which shall be done after the proper summonses.

Should no such request be made, the certificate shall be delivered to the petitioner for such purposes as may be legal and proper.[1]

ART. 1708. A poor litigant may also, in requesting the certificate, appoint an attorney to defend him and a solicitor to represent him before the supreme court.

Should he not make these appointments, or if the persons designated should not accept the same, they shall be appointed *ex officio*.

ART. 1709. After the certificate referred to in the foregoing article has been received by the supreme court, the admission chamber shall order, if the appellant should have appointed an attorney and a solicitor, that they be required to state whether or not they accept the defense and representation.

If they should answer in the affirmative, the certificate shall be delivered to the solicitor, in order that, within a period of twenty days, he may file the appeal for annulment of judgment.[2]

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[1] When the appellant who has been declared a poor person does not request that the certificate of the judgmeut to interpose the appeal be transmitted *ex officio* to the supreme court, but that it be delivered to his solicitor, the period to interpose the appeal must be counted from the date of the delivery.—*Decision of October 8, 1885.*

In the case of article 1707, the summons must be made without fixing the period of forty days or any other, because in such case the appearance and the hearing and determination of the appeal is governed by the procedure and terms prescribed in article 1709.—*Decisions of December 14 and 17, 1885, and April 28, 1886.*

[2] According to this article an appeal by reason of violation of law must be filed within the period of twenty days, which shall begin to be counted from the date following that of the notification of the order by which the delivery of the record

ART. 1710. If the person interested should not have appointed an attorney or solicitor, or if the latter should not have appeared on his behalf with a proper power of attorney, after ten days following the transmission of the certificate by the audiencia, the chamber of the supreme court shall order that the deans of the respective colleges appoint such persons whose turn it is to be given the same. The same order shall be issued if those appointed by the party interested, or any of them, should refuse to accept the appointment.

ART. 1711. After the attorney and solicitor have been appointed, the chamber shall order that a certified copy of the judgment be delivered to the latter, in order that, within the period of twenty days, he may present the appeal, authorized with the signature of the attorney.[1]

ART. 1712. If the attorney appointed by the party or *ex officio* should not consider that an appeal lies, he shall so state in writing, but without giving the reasons for his opinion, within a period of three days. In such case a new attorney shall be appointed within the two days following, and if he should concur in the opinion of the first attorney, a third one shall be appointed. The provisions affecting the first attorney shall be obligatory for the other two.

The attorney who does not return the record within three days and state his opinion that an appeal would not be well taken, is bound to file said appeal within the period prescribed in the foregoing article.[2]

ART. 1713. If the three attorneys should concur in the opinion that no appeal lies, the record shall be transmitted to the representative of

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for the purpose of preparing the appeal was ordered, and therefore an appeal filed after the termination of said period is not admissible.—*Decision of June 8, 1888.*

The period within which to interpose an appeal for annulment of judgment by reason of a violation of law, in case that the appellant appears as a poor person and the certificate of the judgment, therefore, was transmitted *ex officio*, is twenty days, counted from the date of the notification of the order, as is specifically prescribed by this article, for which reason an appeal filed outside of the aforementioned period of twenty days is not admissible according to the provisions of article 1727, subdivision 1, and article 1726.—*Decision of September 27, 1888.*

[1] After an attorney and a solicitor have been appointed *ex officio* for the appellant, as prescribed in this article, the appeal interposed can not be admitted after the expiration of the twenty days fixed for the purpose.—*Decision of November 7, 1883.*

The period of twenty days begins from the day following that on which the certificate is ordered delivered to the solicitor.—*Decisions of August 21 and December 4, 1884.*

After the certified copy of the judgment has been delivered to the counsel of the poor litigant appointed *ex officio*, it is necessary that the appeal be filed within a period of twenty days, counted from the day following that of the notification of the order which orders the delivery of the record to the solicitor; otherwise the appeal shall not be allowed.—*Decisions of January 5 and 28 and February 26, 1885.*

[2] The period of twenty days must be counted from the day following the notification of the order by which the record was ordered delivered to the solicitor, and not from the day on which an order is issued to file the appeal by reason of the record being returned outside of the legal period.—*Decision of May 13, 1886.*

the department of public prosecution, in order that he may file the appeal within a period of ten days, if he considers that said appeal legally lies; otherwise he shall return the record marked "Examined" (*visto*).

In the latter case the chamber shall declare that the appeal does not lie, and shall communicate this decision to the audiencia, returning the abstract.[1]

SECTION IV.—*Interposition and admission of an appeal for violation of law or of doctrine.*

ART. 1714. The party obtaining the certified copy of the judgment shall file the appeal for annulment of judgment in the admission chamber of the supreme court within a period of sixty days, which period shall begin to be counted from the day following that of the delivery of the certificate.

Upon the expiration of this period the judgment shall become final, and the appeal shall not be admitted even though no entry of default has been requested by the opposite party.[2]

ART. 1715. As soon as a solicitor sufficiently empowered appears, stating that he intends to file an appeal for annulment of judgment, the chamber shall order that he be considered a party to the action, and that the record, with a certificate of the reserved votes and the abstract, be delivered to him, if he should so request.[3]

ART. 1716. To the appeal shall be attached—

1. The power which shows that the solicitor is the legal representative of the party, unless he has been appointed *ex officio* or unless he has previously presented the same.[4]

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[1]The appeals for a violation of law or breach of form instituted by persons declared poor can not be interposed by an attorney appointed by the appellant when the record has already been referred to the three attorneys *ex officio* and the period for the summons has already expired, because it would be a retrogression in the proceedings.—*Decision of September 26, 1884.*

[2]An appeal signed only by the attorney and solicitor of the party and not by the party interested can not be acted upon.—*Decision of May 24, 1882.*

[3]The omfssion of the presentation of the power of attorney by the solicitor renders the admission of the appeal for annulment of judgment impossible, unless said solicitor has been appointed *ex officio* or has presented said power before in the same proceedings. The absence thereof can not be made good by the statement of the solicitor to the effect that his representation was proven in the proceedings had before the audiencia, because the law requires that the power of attorney be presented in the proceedings had in the appeal.—*Decision of April 10, 1886.*

[4]When some litigants are declared poor, but the solicitor who appears for them has not been appointed *ex officio* or *apud nacta*, the appeal can not be allowed if the proper power of attorney executed by said parties is not presented, because their personal capacity is not proven.—*Decisions of June 22 and July 22, 1885.*

2. Certified copy of the judgment.[1]

3. The document showing that the deposit referred to in articles 1696 and 1697 has been made when it is necessary.[2]

4. In actions of unlawful detainer, when the lessee or tenant is the appellant, he shall also present the document showing the payment or deposit of the rental, in accordance with the provisions of article 1564.

5. As many copies of the appeal, drafted on ordinary paper, signed by the solicitor, as there are other litigants who may have been summoned in the person of their solicitors.

These copies shall be delivered to said parties when their appearance becomes of record.

ART. 1717. If the document mentioned in subdivision 3 of the foregoing article should not be presented, and, in a proper case, that mentioned in subdivision 4, the appeal shall be ordered returned to the appellant.

ART. 1718. The paragraph of article 1690 upon which the appeal is based shall be stated in the petition, and the law or legal doctrine alleged to have been violated shall be precisely and clearly cited, as well as the manner in which the violation occurred.

If there should be two or more bases or reasons for the appeal, they shall be stated in separate and numbered paragraphs.[3]

ART. 1719. The appellants for annulment of judgment shall establish before the audiencia that they have prepared the appeal in the supreme court within the legal period. This shall be done within

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[1] In order that the supreme court may decide as to whether an appeal has been interposed in time or not, it is necessary that in the certificate of the judgment the notification of the same be inserted in full or in brief, as well as the petition for the certificate and the order granting the same.—*Decision of May 19, 1885.*

[2] An appeal can not be allowed when the document is not presented showing that the deposit has been made, nor the certified copy of the declaration of poverty, although it should appear from the record that proceedings therefor have been instituted.—*Decision of June 18, 1886.*

In order that the appellant may be excused from the obligation of making the deposit, it is not sufficient that he has instituted proceedings to secure a declaration of poverty, but it is necessary that this declaration has already been made.—*Decision of May 14, 1886.*

[3] As the Supreme Court has repeatedly declared, the citation of laws and doctrine as violated can not be taken into consideration for the purposes of an appeal for annulment of judgment when it is not stated in what manner the violation has occurred; and, therefore, vague citations can not serve as a basis for an appeal for annulment of judgment.—*Decision of June 7, 1884.*

It is impossible to determine whether the doctrine violated is or is not applicable to a specific case if the manner in which it is supposed to have been violated is not stated.—*Decision of July 2, 1886.*

Although an appeal for annulment of judgment does not lie from the *considerandos* of judgments, this is understood when the adjudging part thereof is based upon other findings and does not violate any of the laws cited against said *considerandos.*—*Decision of July 2, 1887.*

the period of forty-five days from the day following the expiration of said legal period.

Should they not do so, the audiencia shall order, at the instance of a party, that the judgment appealed from be executed.

ART. 1720. After the appeal for annulment of judgment for violation of law or of legal doctrine has been interposed in the proper manner and at the proper time, the record shall be transmitted to the *fiscal* for a period of ten days, in order that he may give his opinion as to whether or not the appeal lies.

ART. 1721. If the *fiscal* should be of the opinion that the appeal lies, he shall return the record endorsed "examined" (*vistos*).

If he is of the opinion that the appeal *in toto* or in part does not lie, being included in one of the cases mentioned in article 1727, he shall state in a written argument the legal grounds upon which he bases his opinion.

The secretary shall give a literal copy of this opinion drafted on ordinary paper to the appellant, and also to the appellee, if the latter's appearance is of record or should be of record before the day of the hearing.

ART. 1722. Upon the return of the record by the *fiscal* it shall be referred to the justice *ponente* for six days, in order that he may prepare the case and orally submit it, together with such decision as he may deem proper, to the deliberation of the chamber.

ART. 1723. If in the opinion of the *fiscal* the admission of the appeal was not proper because he considered it included in one of the cases mentioned in subdivisions 1 and 2 of article 1727, the chamber shall, without further proceedings, decide what it may deem proper.

With the exception of this case, if the *fiscal* should deem the admission improper *in toto* or in part the chamber shall fix a day for a hearing upon the admission, citing the said *fiscal* and the parties whose appearance is of record.

A similar order shall issue when, in view of the report of the *ponente*, there might be, in the opinion of said chamber, doubts as to the admissibility of the appeal which requires a fuller examination.

If there should not be such a doubt in the opinion of a majority of the chamber, it shall at once render its decision, admitting the appeal without a public hearing or citation of the parties.

ART. 1724. For the hearing and decision upon the admission of an appeal the chamber shall be constituted in the manner prescribed in article 1741, even in the case mentioned in the last paragraph of the foregoing article.

ART. 1725. The representative of the department of public prosecution shall attend the hearing, if he deems it proper, as well as the attorneys for the parties.

The proceedings shall begin with a reading of the judgment upon which the appeal is based and the reasons for an annulment.

The attorney for the appellant shall first state his case, followed by the attorney for the appellee, and finally by the representative of the department of public prosecution, if present.

The statements shall be confined to the specific question as to whether or not the appeal lies, or to the reasons advanced by the fiscal, without the presiding judge allowing the question of principle to be discussed thereat.

ART. 1726. Within ten days after the hearing, the chamber shall render a decision as to whatever it may deem proper. This decision shall contain one of the following three declarations:

First. That the appeal does not lie, adjudging the costs against the appellant and ordering the deposit to be returned to him.

This decision shall be communicated to the proper audiencia, with a return of the abstract.

Second. That the appeal be admitted, ordering that the record be transmitted to the first chamber.

Third. That the appeal be admitted with regard to the grounds which the chamber deems admissible, and that no appeal lies with regard to the other grounds, and ordering that the record be transmitted to the first chamber.

ART. 1727. The first of the declarations mentioned in the foregoing article shall be rendered—

1. When the certificate was requested or the appeal interposed outside of the periods respectively fixed in articles 1698, 1709, 1711, and 1714.

2. When the documents mentioned in the first four subdivisions of article 1716 have not been presented, or the power of attorney should be insufficient, or the deposit should not have been made in accordance with the provisions contained in articles 1696 and 1697.[1]

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[1] When the appellant lacks personal capacity, it is not necessary to examine the violations which he alleges to have been committed.—*Decison of October 23, 1884.*

In accordance with article 1796, a person who desires to interpose an appeal for annulment of judgment, if he has not been declared a poor person, must make the deposit of 1,000 pesetas when the judgments agree in all particulars.—*Decision of April 14, 1887.*

Should the proper deposit not accompany an appeal interposed, when said deposit is necessary, as is the case when a judgment rendered in first instance is appealed from by a person who has not been declared poor to litigate, the appeal can not be admitted in accordance with the provisions of articles 1126 and 1727, subdivision 2.—*Decision of April 5, 1888.*

When the appellant has not obtained a declaration of poverty nor attaches to the appeal the document showing that he has made the deposit in accordance with the provisions of articles 1716 and 1696, the admission is not proper in accordance with the provisions of subdivision 2 of article 1727.—*Decision of June 20, 1888.*

3. When the judgment is not final or is not subject to an appeal for annulment of judgment, on account of the character or import of the action in which it may have been rendered, in accordance with articles 1688, 1692, and 1693.[1]

4. When the laws alleged to have been violated and the manner in which they have been violated have not been cited with precision and clearness.[2]

5. When the law or doctrine cited relates to questions not discussed in the action.[3]

6. When, in alleging the violation of a law which contains various provisions, the provision or article supposed to have been violated is not specifically cited.

7. When it is evident that the law which is cited as violated is not applicable to the allegations made in the appeal.[4]

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[1] A decision rendered upon an issue incidental to intestate proceedings, which is limited to the retention of some property, is not definite, because it does not terminate the proceedings nor prevent the appellant from instituting the proper declaratory action for the purpose of asserting his rights.—*Decision of April 19, 1887.*

The admission of the appeal is not proper upon questions not discussed in the action.—*Decision of May 9, 1887.*

Appeals for annulment of judgment for breach of form must not be interposed until after the final judgment has been rendered.—*Decision of June 24, 1887.*

A decision containing the declaration of poverty of a litigant, does not terminate the proceedings in question, but on the contrary, it facilitates the continuation thereof; therefore, an appeal for annulment of judgment does not lie, in accordance with subdivision 3 of article 1727.—*Decision of September 29, 1887.*

The appeal can not be admitted when the citation of article 1692 is entirely omitted and when, in addition, it is not stated in what manner article 1400 was violated, the only legal provision which is pleaded to obtain the annulment of the judgment and which, by reason of its containing five paragraphs, necessarily required the determination prescribed by law.—*Decision of October 5, 1888.*

[2] When, in addition to the noncitation of the law upon which the appeal is based, the manner in which it was violated is also omitted, the appeal can not be acted upon in accordance with subdivision 4 of article 1727.—*Decision of November 18, 1887.*

[3] Questions which have not been raised and discussed at the proper time in the action can not serve as grounds for an appeal for annulment of judgment, nor reasons which relate to a fact not mentioned in the action.—*Decisions of April 18, 23, and 25, and May 16 and 28, 1884.*

Questions which have not been submitted and discussed in the action can not be referred to in appeals for annulment of judgment.—*Decisions of July 4 and November 11, 12, 20, and 25, 1884.*

The appeal does not lie, in accordance with articles 1726, subdivision 1, and 1727, subdivision 5, of the law of Civil Procedure, when the laws or doctrine which are alleged to have been violated relate to questions not discussed in the action.—*Decision of April 12, 1885.*

This appeal is not admissible when the legal provisions which are supposed to have been violated relate to questions which have not been discussed in the action.—*Decision of January 20, 1887.*

[4] When, in order to plead reasons for the annulment of the judgments, statements are made which are not true, the appeal is not admissible.—*Decision of December 22, 1886.*

8. When the appeal or the violation alleged is based upon the incongruence of the judgment with the complaint and exceptions pleaded and it clearly appears that there is no such incongruence.[1]

9. When the appeal is based upon the consideration of the evidence, unless it is included in the provisions of subdivision 7 of article 1690.[2]

10. When principles cited as legal doctrine are not such, or when opinions of jurists are cited to which the legislation of the country does not give the force of law.

An appeal for annulment of judgment does not lie when the reasons upon which it is based are directed against the citations made in the judgment appealed from or upon incorrect suppositions.—*Decision of January 7, 1887.*

The appeal does not lie when in the grounds therefor laws inapplicable to the question at issue are cited, or incorrect suppositions are made.—*Decision of July 8, 1887.*

[1] When the appeal or violation alleged relates to the incongruence of the judgment with the complaint and the exceptions, and it clearly appears that such incongruence does not exist, the admission of the appeal shall not be proper in accordance with the provisions contained in subdivision 8 of article 1727.—*Decision of December 18, 1886.*

A judgment which requires the payment of the amount and the interest thereon, demanded in a complaint, is not incongruent, and therefore the admission of said appeal based upon such incongruence is not proper in accordance with subdivision 8 of article 1727.—*Decision of May 13, 1887.*

[2] When the infractions alleged are based upon an improper consideration of the evidence relating to the poverty pleaded by the appellant, without stating that there has been an error of law or of fact in the manner mentioned in subdivision 7 of article 1890, in order that it may be considered as included under this article, the admission of the appeal is not proper in accordance with subdivision 9 of article 1727.—*Decision of May 6, 1887.*

In accordance with the provisions of article 1727, subdivision 9, an appeal must not be admitted when it is based upon the improper consideration of evidence by the adjudging chamber and does not cite any law or legal doctrine as violated by said consideration of evidence in order to prove the error of law committed by the court nor the document or authentic act which shows the error of fact, and consequently subdivision 7 of article 1690 is not applicable thereto.—*Decisions of May 16, 23, and 31, 1887.*

When an appeal for annulment of judgment is interposed based upon a violation of law and authorized by subdivision 7 of article 1690, no law or legal doctrine being cited relating to the value of the evidence, supposed to have been infringed and constituting an error of law, or no error of fact apparent from documents or authentic acts which demonstrate the evident error of the judge, the appeal is not admissible, as prescribed by subdivision 9 of article 1727.—*Decision of November 5, 1887.*

When, although the appeal is based on subdivision 1 of article 1690, all the arguments advanced in support thereof are directed to opposing the affirmation of a fact considered by the adjudging chamber without alleging an error of fact or of law, as required by subdivision 7 of said article, the said appeal is not admissible in accordance with the provisions of subdivision 9 of article 1727.—*Decision of December 1, 1887.*

When the adjudging chamber has declared, in view of the result of the evidence submitted by either party, that the plaintiff, far from proving the points included in the complaint, appears to have already received all that he claims, which consideration is irrevocable because it is not impugned by the appellant, the admission of the appeal is not proper, in accordance with the provisions of article 1727, subdivision 9, ady cited.—*Decision of June 4, 1888.*

ART. 1728. The second of the declarations mentioned in article 1726 shall be made when the appeal must be admitted on account of not being included in any of the cases of the foregoing article.

ART. 1729. The third of the declarations mentioned in article 1726 shall be made when, the appeal being interposed in the proper manner and at the proper time, it is based upon both admissible and nonadmissible grounds.

ART. 1730. No remedy whatsoever shall lie against the declarations referred to in the foregoing articles.

SECTION V.—*Hearing and decision of appeals admitted for violation of law or legal doctrine.*

ART. 1731. After the record has been received by the first chamber it shall make an order requiring that information of the receipt of said record be given to the parties whose appearance is of record, and that it be delivered to the appellant for examination for a period of ten days.

ART. 1732. The appellant shall return the record with a written document, stating that he has examined the same. He may therein request that the audiencia be required to transmit one or more of the documents on file in the action, provided that the following circumstances are attendant:

1. That the statement made of the documents in the abstract, or in the judgment of the audiencia, is insufficient to properly consider their value and meaning.

2. That they are of such necessary and direct influence that the decision of the appeal may depend thereon.

The appellant may also request that a certificate of any proceeding for the taking of evidence had in the action be demanded and attached to the record, if the aforementioned circumstances are attendant.

ART. 1733. After the record has been returned by the appellant, it shall be delivered for examination, in their order, to the other litigants whose appearance is of record, for an equal period of ten days to each.

Said litigants may also request the transcript and transmission of documents, provided that the circumstances mentioned in the foregoing article are attendant.

ART. 1734. If the appearance of the party in whose favor judgment was rendered be not of record, proceedings upon the appeal shall be had without hearing said party therein; if, however, the appearance of said party becomes of record before the hearing, he shall be considered a party to the appeal, and it shall be ordered that the subsequent proceedings be had with him and that he be given a copy of the appeal, without retrogressing in the proceedings.

ART. 1735. If any of the parties should have requested the transmission of true copies of the documents, the chamber shall order, as

soon as all the parties have stated that they have examined the record, that it be delivered to the justice *ponente;* and in view of his report upon said request, he shall render the proper decision, against which there shall be no further remedy.

ART. 1736. When copies of the documents in the principal action have been attached to the record, it shall be referred for examination to each of the parties litigant for a period not to exceed eight days.

ART. 1737. After the parties have examined the record, the chamber shall declare the record closed and shall order the same brought before it, making the proper citations.

ART. 1738. The secretary who is acting as *relator* shall make a memorandum setting forth the issues of fact and of law included in the abstract and in the judgment of the audiencia, in so far as they have reference to the grounds for the annulment of judgment, making special mention of the adjudging part of the judgment, of the reserved votes, should there be any, of the laws and doctrine which are cited as violated, and of the manner in which it is alleged said violation has been committed.

Two days before that fixed for the hearing the *relator* shall deliver a copy of said memorandum to each of the justices constituting the chamber. A similar copy shall be delivered on the same day to each of the parties.

ART. 1739. Neither before nor during the hearing shall the chamber admit or allow the reading of any document, or the allegation of any facts not appearing in the record.

ART. 1740. The hearings of appeals shall begin with the reading of the memorandum made by the *relator*, and thereafter the attorneys for the parties shall state their case in their regular order.

ART. 1741. The presiding judge of the chamber and six associate justices must attend the hearing of the appeal, one of the justices being the *ponente*. In the absence of the presiding judge of the chamber, he shall be replaced by the presiding judge of the court, and if the latter should be absent or prevented from attending, or be disqualified, the senior justice of the chamber shall preside.

ART. 1742. The court shall render judgment within fifteen days, counted from the day following that of the conclusion of the hearing.

ART. 1743. If the court should be of the opinion that the violation of law or of doctrine upon which the appeal is based has been committed in the judgment, it shall admit the appeal and reverse the judgment, ordering the return of the deposit, should any have been made.

Immediately thereafter and separately the court shall render the judgment which may be proper upon the question at issue or upon the issues involved.

ART. 1744. Before rendering either of the two judgments mentioned in the foregoing article, the chamber may order, in furtherance of

justice, the transmission of certified copies drafted on official paper of the files in the action, or a certificate of any instrument, act, or proceeding which has taken place in the same, and may even order the transmission of a certified copy, drafted on official paper, of the whole case, if it should deem it absolutely necessary in order to render a proper judgment.

In any case the second judgment shall be rendered without a new hearing.

ART. 1745. The period within which to render judgment, in the case of the first paragraph of the foregoing article, shall begin to be counted from the day following that of the receipt by the chamber of the proceedings or documents which may have been requested.

ART. 1746. Judgments disallowing the appeal shall adjudge the appellant to pay all of the costs and to lose the deposit, if any has been made, and shall order that said deposit be applied as prescribed by law.

SECTION VI.—*Interposition, admission of, and proceedings in an appeal for breach of form.*

ART. 1747. An appeal for annulment of judgment for breach of form shall be interposed in the chamber which may have rendered the same within the ten days next following that of the notification of said judgment to the party who proposed it.

If no appeal is taken before the expiration of said period, the judgment shall become final *de jure*.[1]

ART. 1748. In the appeal shall be stated the case or cases of article 1691 on which it is based, and the efforts which may have been made to cure the defect, or that it was impossible to do so in accordance with the provisions of articles 1694 and 1695.

ART. 1749. With the appeal shall be presented the document proving that the deposit prescribed in articles 1696 and 1697 has been made.

Without this document the appeal shall not be admitted unless it has been ordered that the appellant be defended as a poor person.[2]

ART. 1750. After the appeal has been filed the chamber shall determine:

1. Whether the judgment is final or should be so considered according to article 1688.

2. Whether the appeal had been interposed within the legal period.

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[1] If on interposing the appeal for breach of form in an audiencia the case of article 1691 of the Law of Civil Procedure on which it is based is not cited at the proper time, although afterwards it is proposed to cure this defect, said appeal does not lie, and the chamber which so considers, according to article 1752 of the said law, conforms thereto.—*Decision of April 30, 1885.*

[2] The deposit is always necessary in these appeals, whether or not the judgments rendered in first or second instance agree.—*Decision of May 12, 1886.*

3. Whether it is based upon any of the grounds specifically designated in article 1691.

4. Whether the omission or fault had been corrected within the proper time, if said correction could have been made according to articles 1694 and 1695.

ART. 1751. If all the circumstances mentioned in the foregoing article are attendant, the chamber shall within three days make a ruling admitting the appeal and ordering that the parties be summoned to appear before the supreme court within a period of sixty days, counted from the date of the entry, showing that the documents necessary for the proceedings in the appeal have been *ex officio* transmitted to the said supreme court.

For this purpose the chamber shall order that, after a succinct report of the suit, a literal transcript be made of that part of the record, or issues and the details of the same upon which the appeal is based and in which it is alleged that there has been a breach of form, which transcript, drawn on official stamped paper, setting forth that the parties agree as to the fidelity of the copy of the record, in so far as it relates to the appeal, shall be transmitted by the chamber to the supreme court by the earliest direct mail after the day when the aforesaid agreement was recorded.

The parties must state their agreement to the statements made as to the literal exactness of the transcript, or they must state what they believe should be added thereto within the period of five days, which can not be extended; and no appeal shall lie from any decision of the chamber except a complaint, as provided for the denial of certificates in articles 1701 and 1703 *et seq.* in so far as applicable.

The fact of the transmission of the transcript shall be entered in the record, as prescribed in article 1706.

ART. 1752. If all the circumstances mentioned in article 1750 are not attendant, the adjudging chamber shall rule that no appeal lies and shall order the delivery of a certified copy of the appeal and of the ruling to the party that considers himself aggrieved, should he so request.

The date of the delivery of said copy shall be stated at the foot thereof.

ART. 1753. With the certified copy referred to in the foregoing article the party may interpose a complaint before the admission chamber of the supreme court within the periods respectively fixed in article 1701; but if said periods should elapse without the complaint being interposed, it shall be denied and notice of the decision thereupon shall be given to the audiencia.

ART. 1754. If the party desiring to complain should have been declared a poor person, the provisions prescribed in articles 1704, 1707 *et seq.* shall be observed.

ART. 1755. After the complaint has been filed the chamber shall, without further proceedings, render the proper decision within a period of five days, against which there shall be no further remedy.

ART. 1756. When the supreme court reverses the decision denying the admission of the remedy of complaint, it shall declare the same allowed and shall issue an order to the audiencia to forward the record, together with the certificate and summonses prescribed in article 1751.

ART. 1757. If the supreme court should affirm the ruling denying the admission of the complaint, it shall communicate the same to the audiencia for the proper purposes.

ART. 1758. After the record has been received by the admission chamber, and the appellant has appeared within the period of time mentioned in the summons, the chamber shall order that the record be delivered to the relator for the preparation of the abstract.

ART. 1759. After the abstract has been made the chamber shall order that it be delivered with the record to the parties for examination in their order to each for a period of ten days.

ART. 1760. On returning the record the parties shall state their agreement to the abstract, or shall propose the additions or corrections which they may consider necessary.

ART. 1761. After the abstract has been agreed to by the parties, or after such changes have been made therein as the chamber may consider proper, and after the justice *ponente* has been heard, the chamber shall declare the record closed and shall order that it be brought before it and the parties in interest be cited to appear.

ART. 1762. In the hearing of these remedies the provisions prescribed in articles 1739, 1740, and 1741 shall be observed without change, except that it shall begin with the reading of the abstract, followed by the arguments of the attorneys of the parties in their proper order.

ART. 1763. Judgment shall be rendered within a period of ten days, counted from the day following that of the hearing.

ART. 1764. In decisions allowing appeals for annulment of judgment the deposit shall be ordered returned to the appellant and the record to the proper audiencia, in order that the record be placed as it was when the error was committed, and that it hear and determine or have the matter heard and determined in accordance with law.

The proper punishments and admonitions shall also be ordered, according to the gravity of the violation.

ART. 1765. When it is declared that no appeal lies, the appellant shall be adjudged to pay the costs and to lose the deposit, should he have made any.

SECTION VII.—*Appeals for breach of form and at the same time for violation of law or doctrine.*

ART. 1766. Persons wishing to interpose an appeal for annulment of judgment for breach of form, and at the same time for violation of law or doctrine, shall prepare the appeal relating to breach of form according to the provisions prescribed in articles 1747, 1748, and 1749.

In a supplementary clause said parties shall formally state their intention of interposing, in due time and in a proper case, before the supreme court the appeal relative to the violation of law or legal doctrine.

ART. 1767. For the admission, hearing, and determination of the appeal for breach of form, the provisions of articles 1750 *et seq.* shall be observed.

ART. 1768. If the third chamber of the supreme court shall declare that no appeal lies for breach of form, it shall order, if the statement mentioned in the second paragraph of article 1766 has been made, that the record be delivered to the appellant in order that, within the precise period of twenty days, which shall begin to be counted from the day following that of the notification of the order, said petitioner may present the appeal for annulment of judgment for violation of law or of legal doctrine according to the provisions of article 1718.

ART. 1769. Before delivering the record to the appellant for the purposes mentioned in the foregoing article, should the respondent so request, the costs incurred in the appeal denied shall be taxed and the taxation approved, for which purpose a separate record shall be prepared if necessary, and the deposit for said appeal shall be distributed as provided for in article 1790.

Otherwise said taxation shall be made after the termination of the appeal for violation of law.

ART. 1770. The document proving that the deposit mentioned in articles 1696 and 1697 has been made, if the case is not one of those excepted, shall be attached to the appeal; otherwise said instrument shall be ordered returned to the party presenting the same.[1]

ART. 1771. The appeal shall be admitted, heard, and determined according to the provisions prescribed in articles 1720 *et seq.*

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[1] It is undoubtedly proper and necessary to deposit 1,000 pesetas for the results of the appeal when the judgment rendered in the second instance affirms, with costs, the judgment in first instance.—*Decision of April 13, 1881.*

According to the provisions of number 2 of article 1727, together with those of articles 1726 and 1696, the appeal for annulment of judgment shall not be admitted if the deposit be not made in case the judgments rendered in first and second instance agree; therefore said deposit should be made when the judgment of the audiencia affirms that of the judge without any other difference than that agreed to by both parties.—*Decision of September 26, 1881.*

SECTION VIII.—*Appeals from decisions rendered by amicable compounders.*

ART. 1772. With the appeal for annulment of judgment from decisions of amicable compounders shall be presented:

1. A certified copy of the compromise.

2. A certified copy of the judgment and of the notice thereof to the appellant.

3. The document showing that the deposit which may be proper according to the provisions of articles 1696 and 1697 has been made.

If the period fixed in the compromise should have been extended and the appeal is based upon the grounds that the decision was not rendered at the proper time, a certified copy of the instrument by which such extension was made shall also be included.

No other document shall be admitted.

ART. 1773. The appeal shall also state the grounds upon which it is based, which shall be of those mentioned in subdivision 3 of article 1689, and the grounds for annulment of judgment shall be alleged in separate and numbered paragraphs.

ART. 1774. The period within which the appeal may be interposed shall be sixty days, which shall commence from the day following that of the notification of the decision to the appellant.

ART. 1775. The appeal shall be presented to the third chamber, which shall order that the other interested parties be cited and summoned to appear and allege their rights before said chamber within forty-five days, counted from the date of the respective ratifications.

ART. 1776. In the hearing, determination, and decision of these appeals the provisions prescribed in Section VI of this title shall be observed.

ART. 1777. When the chamber considers that the amicable compounders did not render their decision at the time designated in the compromise, the chamber shall annul the decision and order the return of the deposit to the appellant.

ART. 1778. If the grounds for the appeal should be that the amicable compounders have determined matters not submitted to their decision, the said chamber shall annul the decision only as to such matters, and shall also order the return of the deposit.

SECTION IX.—*Appeals taken by the department of public prosecution.*

ART. 1779. The department of public prosecution may take an appeal for annulment of judgment in actions in which it is a party, subject to the rules established in the preceding sections, but without having to make any deposit.

ART. 1780. The department of public prosecution may also, in furtherance of justice, interpose at any time an appeal for annulment of judgment for violation of law or legal doctrine in actions in which it has not been a party. In such case the parties to the action shall be summoned and cited to appear, in order that, if they so desire, they may appear before the supreme court within a period of twenty days. The decisions rendered in these appeals shall only have the force of precedents upon the legal questions discussed and decided in the action; but they shall not alter the final judgment nor affect the rights of the parties.

These appeals shall be understood to be admitted *de jure* and shall be interposed directly before the first chamber.

ART. 1781. When the department of public prosecution, in the case of article 1713, interposes an appeal for annulment of judgment, the judgment rendered thereupon shall produce the same effects with regard to the parties to the action as that which would have been rendered if the appeal should have been interposed on behalf of an appellant litigating as a poor person.

ART. 1782. When the appeal interposed by the department of public prosecution in an action in which it may have been a party is denied, the costs incurred by the opposite party shall be paid from the funds retained and derived from one-half of the forfeited deposit.

ART. 1783. The payment of costs referred to in the foregoing article shall be made in the strict order of their priority and according to the amount of funds on hand.

SECTION X.—*Provisions common to all appeals for annulment of judgment.*

ART. 1784. The audiencia may order the execution of the judgment at the request of the party in whose favor said judgment was rendered, even though an appeal for annulment of judgment has been interposed and admitted, provided that said party furnishes security sufficient, in the opinion of said court, for the repayment of any amount he may have received if the judgment should be annulled.

ART. 1785. If the appellant litigates as a poor person, and the appeal be denied, he shall pay, when in better circumstances, the sum that should have been deposited and the amount of the costs the payment of which may have been adjudged against him.

ART. 1786. When two or more appeals of the same kind are interposed against the same decision, said appeals shall be heard and determined jointly in one record, for which purpose they shall be consolidated.

If the appeal of one party should be for a violation of law and that of the other for breach of form, the first appeal shall not be heard and determined until the second is decided.

ART. 1787. At any stage of the appeal the appellant may withdraw therefrom, the provisions of article 1789 being observed.

ART. 1788. The ruling permitting withdrawal from the appeal shall be communicated to the audiencia before which the action was heard, and the abstract or the record, in a proper case, shall be returned and notice thereof shall be given to the parties who may have appeared before the supreme court.

ART. 1789. When the withdrawal from an appeal for violation of law or of legal doctrine should take place before said appeal is admitted by the chamber, the entire deposit shall be ordered returned, one half when the withdrawal takes place after the appeal is admitted and before a date is fixed for hearing, the other half to be applied in the usual manner.

In appeals for breach of form one-half of the deposit shall be returned when the withdrawal takes place before the time set for the hearing.

After a date is set for the hearing no return of deposit shall be made.

ART. 1790. One-half of the amount of the deposit, the forfeiture of which may have been adjudged against the appellant, shall be delivered to the party in whose favor judgment was rendered as an indemnity for losses and damages, and the other half shall remain in the public establishment where said deposit was made for the purposes mentioned in article 1782.

ART. 1791. Decisions rendered by the chamber for hearing appeals for annulment of judgment declaring that an appeal does or does not lie and those rendered by the chamber of admission declaring that an appeal is not admissible in all or any of the points at issue shall be published in the *Gaceta* of Madrid and be inserted in the *Colección Legislativa*, and also in the official *Gacetas* of Havana or of Porto Rico, according to the audiencias before which the actions were heard.

The court may order, should special circumstances of its exclusive consideration be attendant, that the decision be not published, or that the publication be made, suppressing the names of the persons interested in the action and that of the audiencia and court before which the action was heard.

ART. 1792. When, in a proper case, taxation of costs has been made, a certified copy of the judgment or judgments rendered by the supreme court shall be issued and transmitted to the proper court for its execution, returning the abstract and filing the partial transcript of the record or of the documents which may have been transmitted to the supreme court for the hearing and determination of the appeal.

ART. 1793. When the loss of the mail vessel in which were transmitted to the Peninsula the abstracts, transcripts, or documents indispensable for the interposition, hearing, or determination of appeals for annulment of judgment or complaints before the supreme court has

been duly proven by the proper authorities, the periods mentioned in articles 1699, 1701, 1703, 1714, 1751, 1767, 1774, 1775, and 1779 of this law shall be considered as extended, which periods, both in the case of loss and in that of the detention of the vessel en route by *force majeure*, shall commence to be counted anew from the date on which the loss or shipwreck of the mail vessel has become publicly known in the territory of the audiencia or from the date when it is proven that it continued its voyage owing to the cessation of the causes which caused the interruption.

In case of the loss or shipwreck of the respective mail vessel the audiencias or inferior courts in which judgment was rendered in the action shall, within another full period, as provided in this article, deliver the certificates, the certified copies of the abstract, the record, and all other documents which may be proper and shall comply with the provisions of the law for the issue and transmission of the documents rendered useless or lost.

The supreme court shall *ex officio* and at all times reinstate by certified copies and in proper form the orders of mere practice, rulings, or decisions rendered by the first or third chamber of the same in appeals for annulment of judgment when they may have been lost in consequence of the loss or shipwreck of the mail vessels of the Antilles and when the parties petition said court to make good the absence of the decisions originally transmitted.

TITLE XXII.

APPEALS FOR REVIEW.[1]

SECTION I.—*Cases in which an appeal for review lies.*

ART. 1794. The review of a final judgment shall be proper—

1. If, after judgment has been rendered, decisive[2] documents should be recovered which were detained by *force majeure* or by an act of the party in whose favor judgment was rendered.[3]

2. When the judgment was rendered by virtue of documents which at the time said judgment was rendered, were acknowledged and declared false without the knowledge of one of the parties, or whose falsity should be acknowledged or declared afterwards.

3. When the judgment having been rendered on the strength of the evidence of witnesses, who have been found guilty of perjury, based upon declarations which served as a basis for the judgment.

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[1] See article 1251 of the Civil Code.

[2] That is, "having sufficient value and efficiency to decide the suit in a manner contrary to or different from the judgment rendered."—*Decision of July 7, 1886.*

[3] The audiencia having refused the admission of certain documents and the order having been agreed to, the appeal can not be based on the fact that said documents were detained by *force majeure.*—*Decision of February 15, 1886.*

4. If the final judgment should have been illegally secured through bribery, violence, or other fraudulent means.

ART. 1795. The appeal for review shall lie only after the judgment has become final.

SECTION II.—*Terms within which to interpose an appeal for review.*

ART. 1796. In the cases mentioned in article 1794 the period within which an appeal for review may be interposed shall be three months, counted from the day upon which the new documents or fraud were discovered, or from the day when the forgery was acknowledged or declared.

ART. 1797. In order that the appeal be considered as interposed, it shall be necessary that the appellant, should he not have been declared a poor person, file with his appeal for review a document showing that he has deposited the sum of 5,000 pesetas in the establishment provided therefor.

If the value of the subject of litigation be less than 30,000 pesetas the deposit shall not exceed the sixth part thereof.

These amounts shall be returned if the appeal is allowed. Otherwise said amounts shall be applied in the same manner as are the deposits required in the interposition of appeals for annulment of judgment.

ART. 1798. In no case can an appeal for review be interposed after the expiration of five years from the date of the publication of the decision appealed from. Should the appeal be presented after this period, it shall be summarily denied.

SECTION III.—*Hearing and determination of appeals for review.*

ART. 1799. An appeal for review can only be interposed before the third chamber of the supreme court, whatever be the grade of the judge or court before whom or which the judgment in question was made final.

After the presentation of the appeal, the court shall order all the data in the action involved to be brought before the same, and shall further order that all the parties to the action, or their successors in interest, be summoned to appear before it within a period of forty days for the purpose of asserting their rights.

ART. 1800. After the appearance of the parties is of record, or after they have been declared in default, the proceedings shall conform to the procedure prescribed for the hearing and determination of incidental issues, and the opinion of the representative of the department

of public prosecution as to whether or not the appeal lies, shall always be heard before rendering judgment.

ART. 1801. Appeals for review shall not suspend the execution of the final judgments in question.

Nevertheless, the court may, in view of the circumstances, on the petition of the appellant, security having been furnished, and the representatives of the department of public prosecution having been heard, suspend the proceedings for the execution of judgments.

The chamber shall fix the amount of the security, which shall cover the value of the subject of the litigation and the losses and damages consequent to the nonexecution of the judgment, in case said appeal should be denied.

ART. 1802. If, after the appeal for review has been interposed, and at any stage of the proceedings thereafter, questions should arise whose decision appertains to the criminal tribunals, the proceedings in the third chamber of the supreme court shall be suspended until the criminal action is decided by a final sentence.

ART. 1803. In the case of the foregoing article, the period of five years referred to in article 1798 shall be interrupted from the moment criminal proceedings are instituted until they are definitely terminated by a final sentence, and shall commence again when said sentence is pronounced.

SECTION IV.—*Decisions rendered by virtue of appeals for review.*

ART. 1804. If the supreme court should allow the review requested on the ground that the judgment was based upon acknowledged forged or false documentary or oral evidence, or because it was illegally rendered in the other cases mentioned in article 1794, the court shall so declare and shall vacate the judgment *in toto* or in part, according as to whether the grounds for the appeal relate to the whole or to only a part thereof.

ART. 1805. The supreme court, after admitting the appeal for review, having rendered a judgment vacating the final judgment *in toto* or in part, shall order that a certified copy of its decision be issued, and that the record be returned to the court from which it proceeded in order that the parties may assert their rights, as they may desire, in the proper action.

In any case the declarations which may have been made in the appeal for review shall be no further discussed and shall serve as a basis for the new action.

ART. 1806. The rescission of a final judgment as the result of an appeal for review, when admitted, shall produce all its legal effects, except as to vested rights, which must be respected according to the

provisions established in article 42[1] of the mortgage law in force in the islands of Cuba and Porto Rico.

ART. 1807. When the appeal for review is denied, the person interposing it shall be adjudged to pay all the costs of the action and to lose the deposit.

ART. 1808. There shall be no remedy against the decision rendered in the appeal for review.

ART. 1809. The provisions prescribed in article 1793, for the extension of time and other proceedings relating to appeals for annulment of judgment, shall be applicable to appeals for review.

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[1]Article 42 of the mortgage law is as follows:

"ART. 42. Cautionary notices of their respective interests in the corresponding public registries may be demanded by—

"1. The person who enters suit for the ownership of the real property, or for the creation, declaration, modification, or extinction of any property right.

"2. The person who, in accordance with the law, obtains a writ of attachment against the real property of the debtor.

"3. The person who, in any trial, obtains a decree against the defendant, which must be carried out in the manner prescribed by title 8 of the Law of Civil Procedure.

"4. The person who enters a declaratory suit for the fulfillment of any obligation, and who, in accordance with the laws, obtains a decree ordering the sequestration or prohibiting the alienation of the real property.

"5. The person who enters a suit for the purpose of obtaining any of the decrees mentioned in No. 4 of article 2 of this law.

"6. The widower, by the right granted him by article 838 of the Civil Code.

"7. The legatee who, according to the law, has no right to institute testamentary proceedings.

"8. The agricultural creditor, during the time the work lasts which is the object of the loan.

"9. The person who presents an instrument to the registry which can not be definitely recorded on account of some omission which may be repaired, or on account of the incapacity of the register.

"10. The person who in any other case has a right to demand a cautionary notice in accordance with the provisions of this law."

BOOK III.

VOLUNTARY JURISDICTION.

PART FIRST.

TITLE I.

GENERAL PROVISIONS.

ART. 1810. All proceedings in which the intervention of the judge is requested or is necessary, without there being actual litigation, or in which no question is raised between known and determined parties, shall be considered an act of voluntary jurisdiction.[1]

ART. 1811. All days and hours, without exception, are legal for proceedings in acts of voluntary jurisdiction.

ART. 1812. If the person instituting the proceedings, or any person having a legitimate interest therein, should request that some other person be heard, or if the judge should consider it proper, said hearing shall be granted, in which case the record shall be subject to examination in the clerk's office for a short period, which the judge shall fix according to the circumstances of the case.

ART. 1813. In cases in which the hearing is granted the person who instituted the proceedings may also be heard in the manner prescribed in the foregoing article.

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[1] The proceedings observed in actions for the partition of foros appertain to voluntary jurisdiction.—*Decision of February 13, 1871.*

Judicial acts in which is raised a question between known and determined persons should not be considered as of voluntary jurisdiction, notwithstanding the fact that the question has been commenced by such proceedings.—*Decision of April 15, 1872.*

The provisions of the Law of Civil Procedure are subordinate to the wishes of the contracting parties, who have the right to submit as many proper conditions as they may desire.—*Decision of February 7, 1878.*

The claim advanced by a litigant that he be appointed judicial administrator of the property of an absentee because he is the nearest relative of the absent person is not included among the acts of voluntary jurisdiction.—*Decision of January 19, 1880.*

The orders issued in voluntary acts may be varied and modified without strict subjection to the terms established with respect to those issued in the contentious jurisdiction.—*Decision of April 3, 1880.*

Questions which clearly affect known and determined parties can not be considered as acts of voluntary jurisdiction.—*Decision of March 14, 1888.*

ART. 1814. The public prosecutor (*promotor fiscal*) shall also be heard when the petition instituted affects public interests and when it relates to a person or thing whose defense or protection appertains to the public authorities.

The public prosecutor shall prepare his report in writing, for which purpose the record of proceedings shall be delivered to him.

ART. 1815. All documents which may be presented and evidence offered shall be admitted without the necessity of a request or any other formality.

ART. 1816. If opposition to the request should be made by any person having an interest in the matter, the proceedings shall be of contentious jurisdiction, without altering the situation of the parties at the time of the institution of the proceedings, nor the subject-matter thereof, and it shall be subject to the procedure prescribed for the proper action, according to the amount involved.[1]

ART. 1817. The judge may change or modify the orders he may issue without following the rules and formalities prescribed for acts of contentious jurisdiction.

The rulings which have the force of final decisions and against which no remedy shall have been interposed are not included in this provision.[2]

ART. 1818. The party who may have instituted the proceedings may appeal both for review and for stay of proceedings.

ART. 1819. Appeals interposed by those appearing in the same proceedings, or ordered to appear by the judge, or who have appeared to oppose the petition which gave rise to the institution of the proceedings, shall be admitted for review only.

ART. 1820. The procedure for the appeals referred to in the foregoing articles shall conform to that prescribed for incidental issues.

ART. 1821. An appeal for annulment of judgment lies from the decisions rendered by the audiencias.

ART. 1822. The records of proceedings in acts of voluntary jurisdiction shall not be subject to consolidation with any action of contentious jurisdiction.

ART. 1823. The provisions contained in the foregoing articles shall be applicable to acts of voluntary jurisdiction specially mentioned in the following titles, in so far as not in contravention of the special prescriptions thereon.

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[1] From the moment in which there is opposition in acts of voluntary jurisdiction, they become contentions and subject to the procedure prescribed for the proper action.—*Decision of February 20, 1872.*

If to the petition of a husband that his wife return to his domicile and that his daughter be delivered to him, she should make opposition, this would make the matter a question of contentious jurisdiction.—*Decision of December 14, 1887.*

[2] This does not indicate that said rulings are final, and that against them the proper action can not be brought.—*Decision of January 11, 1887.*

TITLE II.

ADOPTION AND ARROGATION.[1]

ART. 1824. In cases in which, in accordance with law, judicial consent is necessary for adoption, the adopter shall request said permission of the judge of first instance of competent jurisdiction, in a written petition, in which he shall state the reasons for the adoption and that the legal requisites are attendant.

The baptismal certificate or the certificates of birth of the adopter and of the adopted shall be attached to the petition, as well as any other documents which may be pertinent, and evidence shall also be furnished of all other matters which can not be proven by documentary evidence, as well as of the benefit of the adoption for the person to be adopted.

ART. 1825. The father or mother who may have the person to be adopted under their power, may subscribe the petition, in which case they shall ratify the same before the judge.

Should they not have subscribed it, they must give their consent in the presence of the judge, which shall be entered upon the record.

ART. 1826. When the person to be adopted is over seven years of age the judge shall have him appear in order to ascertain his wishes, which shall also be entered upon the record if he agrees or does not object thereto.

ART. 1827. Should the person to be adopted not object, and if the father or the mother, in a proper case, consents thereto, the judge shall admit the evidence offered, citing the public prosecutor to appear at the proceeding.

This evidence must be given by three witnesses at least, who shall be vouched for by the court clerk, and if the court clerk should not be acquainted with them they shall then be vouched for by two other witnesses.

ART. 1828. After the evidence has been furnished the record of proceedings shall be referred to the public prosecutor for a period of six days, in order that he may give his opinion as to whether or not the legal requirements for adoption have been complied with or if he considers it necessary to take further evidence, or that some defect in the procedure be cured.

ART. 1829. After the public prosecutor has returned the record of proceedings, and after the defects or omissions he may have noted have been cured, or supplied, in a proper case, the judge shall order the record to be brought before him, and within five days he shall issue a ruling deciding whatever he may deem proper.

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[1] See the provisions of the Civil Code, articles 173 et seq., and the eleventh transitory provision.

ART. 1830. If the judge should consider that the adoption is proper according to law, and that it would be of benefit to the person to be adopted, he shall grant the authority and judicial permission therefor, in order that the adoption may take place, and shall order that the proper certificate be delivered to the persons interested so that the proper instrument may be drafted.

The adopter, the father or mother of the person to be adopted, and the latter, if over fourteen years of age, shall be parties to the said instrument.

ART. 1831. In cases of adoption in which the grant of the King is necessary, and in cases of arrogation, the petition shall be presented to the presiding judge of the audiencia, together with the documents mentioned in the second paragraph of article 1824, and the proceedings shall be instituted in the manner prescribed in title 8 of this book for proceedings to dispense with the law.

This proceeding, after having been passed upon by the chamber of administration (*sala de gobierno*), shall be forwarded to the colonial department for its decision.

TITLE III.

DESIGNATION OF TUTORS AND CURATORS AND THEIR APPOINTMENT.[1]

SECTION I.—*Designation of tutors.*

ART. 1832. After the designation of a tutor is shown to have been made in a testamentary disposition by the father or mother of the minor, the judge shall appoint such person to said office, without bond, if he should have been relieved from furnishing any in the designation.

ART. 1833. The person designated as tutor by any one who may have instituted the minor an heir or left him any important bequest or legacy shall also be appointed, but the exemption from furnishing bond, in a proper case, shall be understood only with regard to the property comprising said inheritance or legacy.[2]

ART. 1834. Notwithstanding the provisions of the two preceding articles, if there be well-founded reasons, which the judge shall take into consideration in view of the special circumstances which may occur, he may require that the tutor or curator designated by the father or mother, or by any other person which has left the minor a bequest or legacy of importance, be required to furnish a bond.[3]

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[1] The entire contents of this title have been greatly modified by the civil code. See articles 199 *et seq.* and transitory provisions 8, 9, and 10 of said code.

[2] See articles 206, 207, 209, 210, 234, 252 to 260, and 261 of the civil code.

[3] At the present time the determination of the bond, as well as all the duties which this law assigned to the judicial authorities, pertain to the family council. See articles 252 to 260 of the civil code.

ART. 1835. Should the father, mother, or other person who has instituted the minor an heir or left him a bequest of importance not have designated a tutor, the judge shall select therefor the relative who is to fill said office in accordance to law.[1]

ART. 1836. The appointment to the office of tutor shall be made after the acceptance thereof by the person designated and after the bond has been furnished, in a proper case.

ART. 1837. In the absence of a relative for such designation, or if such relative does not possess the conditions required by law, and which shall be stated in the record, the judge shall appoint to said office some person whom he may deem worthy of confidence.[2]

ART. 1838. If there should be any opposition to the designation it shall be discussed and decided in accordance with the procedure for incidental issues between the person making the opposition and the tutor designated, the public prosecutor (*promotor fiscal*) representing the interests of the minor.

During the course of said proceedings the custody of the minor and the administration of his estate shall be vested in the tutor designated, under such security as the judge may consider sufficient.

ART. 1839. If the tutor designated should refuse to accept the office the public prosecutor (*promotor fiscal*) shall be heard, and if he should agree thereto the judge shall designate another tutor.

If the public prosecutor should not agree to the refusal, the opposition shall be heard and determined according to the procedure established for incidental issues, the provisions contained in the second paragraph of the foregoing article being observed.

SECTION II.—*Appointment of curators ad bona.*[3]

ART. 1840. After the designation of a curator is shown to have been made in a testamentary disposition by the father or the mother of the minor, or by any other person who may have instituted the latter his heir or left him a bequest of importance, the judge shall make the appointment.

In the same order making the appointment the judge shall decree that bond be furnished or the exemption therefrom, as the case may be, in the manner prescribed for tutors in articles 1832, 1833, and 1834.

ART. 1841. The minor may object to the appointment of a tutor designated by a person who, not being his father or mother, shall have instituted him an heir or have left him a bequest of importance.

Should he make said objection, the judge shall hear the public prosecutor (*promotor fiscal*) in the manner prescribed in article 1814, and if

[1] See articles 211 and 231 of the Civil Code.

[2] See articles 204 and 231 of the Civil Code.

[3] See article 199 of the Civil Code.

he should find that there are grounds for the objection of the minor, he shall deny the appointment to the person designated and shall require the minor to designate another, admonishing him that otherwise one will be appointed *ex officio* to the property comprised in the inheritance or legacy.

ART. 1842. If any question should be raised with regard to any of the particulars indicated in the foregoing articles, it shall be heard and determined in accordance with the procedure prescribed for incidental issues, the minor being represented, in the first place, by the tutor, should he have had one, otherwise by his curator *ad litem*, and in default of both, by the public prosecutor (*promotor fiscal*) of the court.

ART. 1843. Should no curator have been designated by the father, mother, or person who instituted the minor as his heir or who left him a bequest of importance, the minor shall have the right to make said designation.

ART. 1844. The designation of a curator must be made before the judge at the instance of the minor.

ART. 1845. If the person appointed should not possess the qualifications necessary for the discharge of the duties of the office, the judge may deny the appointment, requesting the minor to designate another in his stead.

SECTION III.—*Appointment of curators for incapacitated persons.*[1]

ART. 1846. A judge of competent jurisdiction who has information that any person has been declared, by a final decision, incapacitated to administer his property, shall appoint a curator to such person, the record of the proceedings being begun with a certified copy of said final decision.[2]

ART. 1847. When the incapacity by reason of insanity should not have been declared in a final decision, it shall summarily be determined in a preliminary proceeding, and a provisional curator shall be appointed, the parties reserving the rights they may be entitled to assert in the proper action.[3]

ART. 1848. The appointment of curators for incapacitated persons must be given to the persons hereinafter named, in their regular order, provided they possess the qualifications necessary to perform the duties of said office: father, wife, children, mother, grandparents, and brothers and sisters of the incapacitated person.

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[1] The provisions contained in the articles of this section have been modified by articles 220, 231 and 232 of the Civil Code.

[2] See articles 228 to 230 of the Civil Code.

[3] Article 1244 of the law of 1855 required full proof of the incapacity, it having been declared that a professional examination was not an essential requisite.—*Decision of December 28, 1868.*

ART. 1849. Should there be several children or brothers and sisters, the males shall have preference over the females, and the oldest over the youngest.

Should there be both paternal and maternal grandparents, the males shall also have preference over the females; and if they should be of the same sex, the paternal grandparents shall have preference over the maternal.

ART. 1850. Should there not be any of the persons mentioned in the foregoing article, or should they not be qualified for the curatorship, the judge may appoint any person possessing the proper qualifications, preferring, if qualified, a relative or friend of the incapacitated person or of his parents.[1]

SECTION IV.—*Designation of curators ad litem.*[2]

ART. 1851. Persons under 25 years of age still under the parental authority, shall be represented in court by the persons having them under their authority.

Persons not under parental authority, shall be so represented by their tutors and curators.

ART. 1852. If the parents of the minor subject to parental authority, or his tutors or curators, are disqualified to represent him in court in accordance to law, a curator *ad litem* shall be appointed for him.

The same shall be done if the minor or incapacitated person should not have designated a tutor or curator.

ART. 1853. It shall be the duty of the judge to appoint a curator *ad litem* for persons under fourteen and twelve years of age, according to their sex, and for incapacitated persons.

ART. 1854. The judge shall appoint as such guardian *ad litem* the nearest relative of the minor, should there be any; otherwise, an intimate friend of said minor or of his parents; and if there be none or if they do not possess the legal qualifications necessary, a properly qualified person whom he may deem worthy of confidence.

ART. 1855. Persons under twenty-five years of age, and over fourteen and twelve, according to their respective sex, may themselves designate any person they may wish as guardian *ad litem*, provided they have the legal qualifications necessary to represent them in court. This designation shall be made before the judge.

ART. 1856. The judge may refuse to make the appointment if the person designated by the minor does not have the necessary legal

[1] See article 204 of the CivilCode.

[2] The Civil Code does not speak of curators *ad litem* because in the cases of incompatibility between the interests of the father and the minor, the latter is represented by the next friend referred to in article 165 of the Civil Code, and in cases of similar incompatibility between the interests of the minor and of his tutor, the latter is substituted by the protutor (Art. 236).

qualifications, in which case he shall request the minor to make designation of another person having said qualifications, with the warning that if he does not do so, a guardian *ad litem* will be appointed *ex officio*.

ART. 1857. If any question should be raised over the appointment, it shall be heard and determined in accordance with the procedure prescribed for incidental issues, the minor being represented by the public prosecutor (*promotor fiscal*).

ART. 1858. After a curator *ad litem* has been designated, he shall be appointed in the ordinary manner.

ART. 1859. Curatorship *ad litem* shall cease as soon as a tutor or curator *ad bona* has been appointed for the minor or incapacitated person or a special curator (*ejemplar*), or the incapacity has disappeared.

SECTION V.—*Appointment to the office of tutor or curator.*

ART. 1860. After a tutor or curator *ad bona* or a special curator has been appointed and if the amount of the estate of the minor or incapacitated person be known, the judge shall issue an order requiring that the tutor or curator designated be heard, as well as the public prosecutor (*promotor fiscal*), as to whether the tutor or curator shall apply the profits of the estate to the maintenance of the ward, or whether a determined amount is to be fixed for said maintenance.

If the estate of the minor or incapacitated person should not be known, it shall be sufficient, for the purposes of this article, that the tutor or curator designated present a simple inventory of the estate of the minor, prepared with the assistance of two of the nearest relatives of said minor, one from each line of relationship, and should there not be any, two resident property owners designated by the judge, the *promotor fiscal* being also cited to attend said inventory.

ART. 1861. In view of the statements of the curator and the public prosecutor, the judge shall render the proper decision, fixing the amount of the allowance for maintenance if he approves this means, and determining, futhermore, in such case, the percentage to be allowed the tutor or curator for the performance of his duties.[1]

ART. 1862. The decision referred to in the foregoing article shall be executed without prejudice to an appeal, which shall be allowed for review only.

ART. 1863. The provisions contained in the foregoing articles shall be applicable only to cases in which the person who instituted the minor his heir has not provided otherwise.

ART. 1864. If the tutor or curator designated should not have been relieved from the obligation to furnish bond, he shall be required to

[1] A ruling fixing the allowance for maintenance has not the character of a *res judicata*, and may be modified in the proper ordinary action, if the amount of the estate of the incapacitated person should change.—*Decision of January 11, 1887.*

furnish such bond as the judge may consider necessary to secure the value of the personal property and the rents and profits on the real estate which constitute the estate of the minor or incapacitated person.[1]

ART. 1865. All kinds of bonds shall be admissible, with the exception of personal bonds.

ART. 1866. The bond shall be approved after hearing the public prosecutor (*promotor fiscal*).

The order (*auto*) of approval shall require, as the case may be:

1. The inscription in the registry of property of the real estate embraced in the bond, the provisions of the mortgage law and its regulations being observed.

2. The deposit of the bonds or securities of which the bond consists.

3. The execution of anything else which the judge may consider advisable to make the bond valid and to preserve the property of the minor or incapacitated person.

ART. 1867. After all the proceedings ordered have been complied with, and after the tutor or curator has executed an *apud acta* binding himself to perform the duties of his office in accordance with law, the judge shall make the appointment.

In the order of appointment he shall grant the tutor or curator the power to represent the minor or incapacitated person in accordance with law, and to take care of his person and property, and shall order that the proper transcript of the order of appointment be entered upon the register of the court.

ART. 1868. If the bond should at any time become insufficient, the judge may, *ex officio* or at the instance of any person, order that it be increased to such amount as, in his judgment, should be necessary to secure the results of the administration, the formalities prescribed in the foregoing articles being observed.

ART. 1869. After the appointment has been made the estate of the minor or incapacitated person shall be turned over to the tutor or curator according to inventory, which shall be attached to the record of proceedings, if it should not be included therein, at the foot of which the receipt of the said tutor or curator shall appear.

A similar delivery shall be made, and with the same formality, of the titles and documents relating to said property.

ART. 1870. Curators *ad litem*, designated in accordance with the provisions of this law, shall be appointed after the execution of the obligation prescribed in article 1867, without being required to give bond.

ART. 1871. If the tutor or curator should so request, the tenants, lessees, and other proper persons shall be required to acknowledge him as such tutor or curator.

[1] The provisions of articles 252 et seq. of the Civil Code are to be considered in this connection.

SECTION VI.—*Provisions common to the foregoing sections.*

ART. 1872. Any questions arising over the provisions contained in this title and which are to be decided by litigation, as prescribed therein, shall be heard and determined in accordance with the procedure established for incidental issues.

ART. 1873. If the income from the estate of the minor should not exceed the amount fixed in article 15 of this law, in order to be entitled to obtain the gratuitous administration of justice, the proceedings shall be entered upon official stamped paper and no fees charged.

For this purpose the pauper application shall first be determined, without prejudice, if the judge considers it necessary, to take any urgent measures, doing so at once *ex officio*, or at the instance of the representative of the minor, or of the public prosecutor (*promotor fiscal*).

ART. 1874. In courts of first instance there shall be a register in which transcripts shall be entered of all the appointments of tutors or curators which may be made.

ART. 1875. Within the first eight days of every year the judges shall examine said register, shall demand the reports they may consider necessary, and shall order, as the case may be—[1]

1. The substitution of tutors who may have died.

2. That tutors or curators who are obliged to do so render accounts.

3. The deposit, in the proper establishment, of the surplus remaining from the rents and profits of the estates of minors or incapacitated persons.

4. The profitable investment of existing funds not subject to a special application.

5. The other orders which may be necessary to remedy or prevent abuses in the management of the tutorship or curatorship.[2]

ART. 1876. The public prosecutor (*promotor fiscal*) shall always be heard with regard to the accounts rendered by tutors or curators in the performance of their duties.

ART. 1877. If no objection be made to the account by the minor or by the public prosecutor, it shall be approved without prejudice to the right which the laws grant the minor to claim against any injury caused thereby.

ART. 1878.[3] Tutors or curators, whether *ad bona* or *ad litem*, can not be removed by an act of voluntary jurisdiction, even though it be at the request of the minors.

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[1] These articles have been supplemented by articles 288 to 292 of the Civil Code, which have created a register of guardians.

[2] All the functions of the inspection and surveillance of tutors formerly in charge of the judicial authorities appertain at present to the protutor and family council.

[3] This article has been essentially modified by articles 239 and 240 of the Civil Code, which authorize the family council to order the removal.

For the purpose of ordering their removal after the appointment is made, the matter must be heard and decided in an action.

TITLE IV.

CUSTODY OF PERSONS.

ART. 1879. The custody of the following persons may be ordered:

1. A married woman who proposes to institute or has instituted suit for divorce, or who enters a complaint of concubinage against her husband, or who institutes an action for annulment of marriage.[1]

2. A married woman against whom her husband has instituted suit for divorce, or a complaint of adultery, or an action for the annulment of marriage.

3. A single woman who, having reached the age of twenty years, proposes to contract marriage against the advice of her parents or grandparents.[2]

4. Children under parental authority, pupils or incapacitated persons who may be ill treated by their parents, curators, or tutors, or who are compelled by them to perform acts condemned by law.

5. Orphans who may have been abandoned by reason of the death, indefinite absence in an unknown country, or the legal or physical disability of the persons in charge of them.

ART. 1880. In order to decree the custody in the case of the first paragraph of the foregoing article, a written petition of the wife or of another person at her request must be presented.

ART. 1881. After the petition has been presented, the judge shall call at the husband's house accompanied by the court clerk, and without the presence of the husband he shall have the woman appear before him and state whether or not she ratifies the petition made for her custody.

Should the woman not be found in the husband's house, the said proceedings and the others referred to in the following articles, shall be had at the house where she may be found, first citing the husband to appear thereat on the day and hour fixed, with the admonition that without further notice the said proceedings shall be had even should he not appear.

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[1] See article 68, subdivision 2, of the Civil Code. When the temporary custody of a married woman is in question, as the orders relating thereto are not final, an appeal for annulment of judgment does not lie.—*Decision of June 28, 1865.*

[2] According to the law of June 20, 1862, sons under twenty-three years of age and daughters under twenty could not contract marriage under any pretext whatsoever, nor in any case without the paternal consent (or of the mother, or the grandparents, the curator, or the judge, in a proper case). The Civil Code prohibits the marriage of a minor who has not obtained permission (article 45, subdivision 1).

Should the husband not be present the judge shall decide what may be proper.

ART. 1882. If the petitioner ratifies her request, the judge shall endeavor to have the husband and wife agree upon the person to act as custodian.

ART. 1883. Should they not agree, or if the husband should not have attended, the judge shall select as custodian the person whom he believes to be most proper, either from among those designated by one of the parties, if he considers the objection made by the other unfounded, or any other person whom he deems worthy of confidence.

ART. 1884. He shall also order that the bed and clothing in daily use by the wife be immediately delivered to her, the proper inventory being made.

ART. 1885. Should any question arise as to the clothing which should be delivered to her, the judge shall, without further remedy and taking into consideration the circumstances of the persons, decide what shall be considered as of daily use and to be delivered to her.

ART. 1886. If there be any children of the marriage, the judge shall order that those under three years of age remain in the custody of the mother, and that those over this age remain with the father until a decision is rendered in the proper action.

ART. 1887. After the provisions prescribed in the foregoing articles have been complied with, the judge shall vest the custody with the proper formalities.

ART. 1888. There shall be delivered to the custodian, for his own security, an authenticated copy of the order appointing him and of that vesting the custody.

ART. 1889. After the custody has been effected, the judge shall issue an order enjoining the husband from molesting his wife, or the custodian, with the admonition that otherwise he shall be proceeded against as circumstances may determine, and with the admonition to the wife that if she does not prove that she has instituted an action for divorce or for annulment of marriage or for concubinage within one month, the custody shall be dissolved and she shall be returned to the house of her husband.

ART. 1890. The period of one month shall be increased one day for every thirty kilometers of distance between the town in which the custody was effected and the residence of the ecclesiastical judge or judge of first instance who is to take cognizance of the main action.

ART. 1891. If the woman who requests custody should reside in a place other than that in which the court is situate, the judge may commission the municipal judge to effect the custody, without prejudice to the right of the said judge to do it himself should he deem it necessary.

ART. 1892. The period fixed for the custody may be extended if it

be proven that owing to a cause not within the control of the woman it has been impossible to institute or file the proper action or complaint.

ART. 1893. If it be not satisfactorily shown that the action or complaint has been instituted or filed within the period fixed, the judge shall dissolve the custody, ordering that the wife be returned to the house of her husband.[1]

ART. 1894. As soon as the wife has shown that the claim or complaint has been admitted, the custody shall be ratified unless she requests that it be vested in the person she may designate.[2]

ART. 1895. An appeal lies from such ruling. The appeal shall be admitted for review and a stay of proceedings to the wife, who requested custody, and only for review to her husband.

ART. 1896. All allegations that may be presented by the wife, husband, or custodian with reference to a change of custody, or any other issue which may arise from said custody, before or after the same is definitely determined, shall be presented in writing by each of the parties; and after verbal evidence has been taken the judge shall decide whatever he may deem proper, in a ruling which may be appealed from for review and for a stay of proceedings.

Petitions made for temporary maintenance are excepted from the foregoing provisions, which shall be heard and determined in accordance with the provisions of Title XVIII, Book II, of this law.

ART. 1897. For the purpose of ordering the custody in the case of the second paragraph of article 1879, it must be first shown that the suit for divorce, the annulment of the marriage, or for adultery, instituted by the husband, has been admitted.

ART. 1898. The admission of the complaint or charge being proven, the judge shall call at the home of the husband and shall endeavor to have him agree with his wife as to the person to be named custodian; and if they can not agree the judge shall appoint the person designated by the husband, should there be no good grounds against such appointment. Otherwise, he shall select the person whom he may consider most proper.

ART. 1899. The rules established in articles 1884, 1885, 1886, 1887, and 1888, the first part of 1889, 1891, and 1896 shall be applicable to the custodies in the cases mentioned in the second paragraph of article 1879.

ART. 1900. In order that the custody of a single woman may be

[1] The decision ordering the dissolution of the custody is not definite, because the woman in interest may again request it.—*Decision of October 15, 1888.*

[2] The power granted by this article to the woman to designate the person in whose custody she desires to be placed, is not nor can it be absolute, but is limited to the residents of the district over which the judge exercises jurisdiction, in accordance with the jurisprudence based upon the spirit of the laws of the Recopilación.—*Decision of June 30, 1866.*

ordered in the cases mentioned in subdivision 3 of article 1879, it must be requested in writing, signed by the said woman herself or by another person at her request, stating the reasons which exist for fearing that coercion or violence will be employed to prevent her from carrying out her purpose.

ART. 1901. If the judge should consider that the reasons are well founded, he shall call at the home of the applicant, and without the presence of her parents or grandparents shall request her to state whether or not she ratifies her petition.

ART. 1902. Should she not ratify it, the judge shall make an order dismissing all proceedings, which shall be filed.

ART. 1903. Should she ratify her petition, the judge shall require the parents or grandparents to designate a custodian, and shall require the person interested to state whether or not she agrees to the custodian they may have designated.

ART. 1904. Should the person interested not oppose the designation, and even should she oppose it, if the judge should consider that the person designated has the necessary qualifications, said person shall be made the custodian.

ART. 1905. Should the judge consider that there are grounds for the objections of the interested person, or that the custodian does not possess the necessary qualifications, he shall appoint another, who shall at once be made the custodian. There shall be no remedy whatsoever against this decision.

ART. 1906. In the same ruling the judge shall order that there be delivered to the person placed in custody the bedding and personal clothing, according to inventory. Should any question arise as to the clothing to be delivered, the judge shall decide it without further remedy.

ART. 1907. The custody shall continue until the marriage is celebrated.

ART. 1908. Such custody, however, may cease:

1. When the marriage is not celebrated within six months from the day on which the custody was ordered.

2. When the person interested abandons her purpose.

In either case the judge shall order that she be restored to the house of her parents or grandparents, and shall cause the proper entry thereof to be made in the record.

ART. 1909. In order to decree the custody in the cases mentioned in subdivision 4 of article 1879, it is necessary:

1. That the person interested request it either in writing or verbally, or if unable to do so in person that another do so in his or her name, but in any case the petition must be ratified in the presence of the judge, should the person have the necessary legal capacity.

2. That the judge be convinced of the truth of the facts, either

from the evidence furnished by the person interested or from data he himself has been able to secure.

ART. 1910. Notwithstanding the provisions of the foregoing article, judges may decree the custody without a request from the person interested, if it should appear to them that the making of said request is impossible.

ART. 1911. If the judge should consider that custody is proper, the person he may designate shall be appointed custodian.

ART. 1912. With regard to the delivery of clothing and bedding, the provisions of articles 1884 et seq. shall be observed.

ART. 1913. After the custody has been ordered a curator *ad litem* shall be appointed for the ward, and when he accepts the charge the record shall be delivered to him in order that he may state and request in the proper action what may be advisable for the protection of said person.

ART. 1914. If the judge should have notice that some orphan under the age of fourteen years, if a male, and under twelve years, if a female, or an incapacitated person, is embraced in the case mentioned in paragraph five of article 1879, he shall proceed to secure said person and his property, placing him in custody and appointing a tutor or curator according to law.

ART. 1915. Without prejudice to the provisions of the second paragraph of article 1896, in the same ruling in which the judge orders the custody of a person, he shall allow him for his temporary maintenance the amount he may deem reasonably necessary according to his property, or that of the person who is to furnish said maintenance, which must be paid monthly in advance.

ART. 1916. To secure the payment of said maintenance the judge shall take such steps as he may consider necessary, and even issue attachments against property therefor.

ART. 1917. In the cases 1 and 2 of article 1879 the maintenance shall be delivered to the woman in custody; in the other cases of the same article it shall be delivered to the custodian.

TITLE V.

SUBSTITUTION FOR THE CONSENT OF PARENTS, GRANDPARENTS, OR CURATORS TO CONTRACT MARRIAGE.[1]

ART. 1918. In the cases in which, according to law, it is the duty of the judicial authority to give its consent for the marriage of a minor, the latter must furnish documentary evidence or the testimony of witnesses to the effect that he is comprised in one of the following cases:

1. That he has no father, mother, paternal nor maternal grandfather,

[1] See the provisions of articles 45 et seq. of the Civil Code.

nor curator designated by will; or in case there are such persons that they are living in countries where it would take more than a year to communicate with them and receive a reply.

2. That the whereabouts of said parents, grandparents, or curator is unknown.

3. That said persons are legally or physically prevented from giving their consent.

4. That the curator designated by will is a relative within the fourth civil degree of the person with whom it is proposed to contract marriage.

ART. 1919. When the evidence has been furnished the record shall be delivered to the public prosecutor (*promotor fiscal*) in order that he may state whether he finds it complete, or otherwise to propose the steps which in his judgement should be taken.

ART. 1920. When the record is returned by the public prosecutor, and the evidence is completed in a proper case, the judge shall order what may be proper.

ART. 1921. If the person who proposes to contract marriage should be a natural or illegitimate child, the judge shall render a decision authorizing or refusing permission, as he may deem proper, according to the data and information he may have been able to secure as to whether or not the marriage should be celebrated.

The ruling refusing consent may be appealed from for review and for a stay of proceedings.

ART. 1922. Should the petitioner be a legitimate child the judge shall order a meeting of the relatives, ordering for the purpose that they be cited to appear at a certain day, hour, and place; and that the necessary letters rogatory be issued to cite those living away from the town to appear in person or by means of a special attorney, under the admonition that their failure to appear, without a legitimate excuse or impediment, shall be punished with a fine which the judge shall fix, but which shall not exceed 125 pesetas.

An attorney can not represent more than one person.

ART. 1923. The meeting of relatives mentioned in the foregoing article shall be composed:

1. Of the ascendants of the minor.

2. Of his brothers who are of age.

3. Of the husbands of the sisters, also of legal age, whose wives are living.

4. In the absence of ascendants, brothers, and husbands of sisters, or when there are less than three, the meeting shall be made up to compose four members, with the nearest male relatives of legal age, taken equally from both lines, commencing with that of the father. When the degree of relationship is equal, the older persons shall be pre-

ferred. The curator, even if a relative, shall not be counted in the number of those who are to form the meeting.

5. In the absence of relatives the meeting shall be completed by selecting honorable neighbors, if possible from among those who have been friends of the parents of the minor.

ART. 1924. Attendance at the meeting of relatives shall be obligatory with regard to those who reside in the domicile of the minor or in another town not more than thirty kilometers distant from the place where it is to be held, the fine prescribed in article 1922 being imposed for their absence without cause. The relatives who reside beyond that distance, but within the territory of the islands of Cuba and Porto Rico, respectively, shall also be cited although distance may serve as an excuse.

Should they not attend, they shall be substituted with the relative of preferred degree and condition, although not cited, who may voluntarily attend, or with the one who should intervene according to the provisions of the foregoing article.

ART. 1925. If the petitioner should not have designated the names of his ascendants, brothers, and husbands of his sisters who should compose the meeting, he shall be required to do so at once.

He shall also be required to state the names of the next nearest relatives in both lines in case that those mentioned do not reach four, and in case that even with these the said number is not completed he shall state who are the reputable neighbors who have been friends of his parents.

ART. 1926. The judge shall select from among the persons designated in the foregoing article those who are to compose the meeting, designating alternatively the relatives in both lines, commencing with the paternal line.

ART. 1927. The relative who believes himself to have been overlooked on account of another relative of a degree more remote having been selected, can demand his admission to the meeting.

Should he not make such a demand it shall be understood that he renounces this right and the resolutions of the meeting shall be valid.

ART. 1928. The curator designated by will and the minor may, before the celebration of the meeting, challenge the relative or friend who may have been appointed when in their judgment there exist reasons for presuming there would be a lack of impartiality or that he would be guided by selfish motives.

ART. 1929. The meeting having assembled on the day appointed under the chairmanship of the judge, before deliberating on the object of the meeting the clerk shall report the petitions for exclusion, and if any have been presented in due form the judge shall decide what he considers proper.

When so many petitions have been admitted that there is not a sufficient number of members to constitute the meeting, it shall be continued to the nearest day possible, and the one excused shall be supplied by another relative or friend.

The admissions or challenges shall then be discussed, after which and after a hearing of the parties interested, should they request it, these questions shall be decided by the meeting and the judge by a majority vote, the vote of the judge being decisive in case of a tie.

Those challenged shall retire before the vote is taken.

ART. 1930. After the meeting is definitely constituted it shall deliberate as to whether the marriage proposed is advantageous or prejudicial to the minor.

The discussion shall always be secret, the clerk retiring before the same commences.

ART. 1931. After the discussion is over the clerk shall return and the voting shall commence.

The resolution of the meeting taken by an absolute majority of votes shall constitute one vote, and the vote of the judge shall be another, who shall cast his vote separately.

When there is a tie of the votes of the relatives and friends, it shall be decided by the judge, who shall always vote last.

If the vote of the judge should not be in harmony with that of the majority, the vote favorable to the marriage shall prevail.

ART. 1932. The clerk shall draft a minute, sufficiently explicit of the resolutions taken by the meeting, and it shall be signed by the judge and all who attended the meeting, said clerk certifying to the same.

ART. 1933. There shall be no remedy whatsoever against the resolution of the meeting, consenting to or denying the permission.

If it were favorable to the marriage, a certified copy of the minute shall be given to the minor interested, in order that he may prove the facts to whomsoever he desires.

ART. 1934. When, according to law, it is the duty of the curator designated by will to grant or refuse his consent to the proposed marriage, it shall be the exclusive right of the municipal judge of the town of the domicile of the minor to call, at the petition of the minor and of the curator, the meeting of relatives and friends, and preside over the same.

The municipal judge shall have the same attributes and powers that are granted to judges of first instance by the foregoing articles, with the following exceptions:

1. The judge shall have neither voice nor vote in the deliberations.

2. The relatives and residents shall first vote, an absolute majority thereof passing a resolution, and then the curator shall vote separately.

3. Should there be a tie in the votes of the relatives and residents,

the vote of the nearest relative shall decide, and should there be two relatives of the same degree of relationship, the vote of the elder shall decide. But if the meeting be composed of respectable residents only, the eldest of them shall have the deciding vote.

4. When the vote of the curator does not agree with that of the meeting, the vote favorable to the marriage shall prevail.

ART. 1935. When legitimate sons over twenty-three years of age, and daughters over twenty years of age, desire to prove to the municipal judge their petition for the advice of their parents or grandparents to contract marriage, they shall verbally request said authority that he cite the person who should give said advice to appear in order to state whether his advice was favorable or unfavorable.

A record shall be made both of the appearance of the person requesting advice, as well as that of the person who should give or refuse it.

ART. 1936. If the person cited to appear should not appear, he shall be again cited; and should he persist in refusing to appear after the third citation, his favorable advice to the marriage shall be taken for granted.

ART. 1937. In the event that the person cited can not appear owing to illness or another legitimate impediment, the municipal judge shall go to his house or place where he may be found in order to receive his declaration.

ART. 1938. When the person cited appears he shall be advised of the petition of the son or daughter, or grandson or granddaughter, and he shall be required to give his favorable or unfavorable advice for the marriage, without allowing evasions or excuses of any kind, under the admonition that otherwise his advice shall be considered favorable.

ART. 1939. The reply given by the father or grandfather shall be entered in the record and a certified copy of the same shall be given to the minor in order that he may make use of his rights.

ART. 1940. When consent has been requested owing to the absence of parents, grandparents, or testamentary curators, or when their whereabouts is unknown, and they should appear before consent is granted, the proceedings shall immediately be terminated.

Should they appear, or notice of their whereabouts be received after consent has been given, but before the celebration of the marriage, the judge shall annul the former, and recover the documents granting the same, so that it may produce no effect.

ART. 1941. The provisions of the foregoing article shall also be observed when the mother may have given her consent owing to the absence of the father, or when his whereabouts was unknown, or when consent was given by the grandfather or testamentary curator, if the impediment of the person whom they substitute should cease.

TITLE VI.

MANNER OF ELEVATING A VERBAL WILL OR CODICIL TO A PUBLIC INSTRUMENT.

ART. 1942. At the instance of a legitimate party a verbal will may be elevated to a public instrument.

ART. 1943. For the purposes of the foregoing article a legitimate party shall be considered—

1. He who may have an interest in the will.

2. He who may have received in the will any commission imposed by the testator.

3. He who according to law is authorized to represent, without a power of attorney, any of the persons mentioned in the foregoing paragraphs.

ART. 1944. If at the time of making the verbal will notes or memoranda should have been taken of the dispositions of the testator, they shall be presented with the petition; the names of the witnesses who are to be examined, and that of the notary, if one was present at the making of the will, and for any reason whatsoever did not elevate it to a public instrument, shall be stated as well as the legitimate interest of the person instituting the proceedings.

ART. 1945. The judge shall issue an order for the witnesses, and the notary, in a proper case, to appear, at the day and hour he may designate, with the admonition that a fine will be imposed and the other corrections which their disobedience may make necessary.

ART. 1946. If any of the persons to be examined should not appear, without alleging a good cause preventing him from being present, the judge shall suspend the proceedings; he shall set a day and hour for their continuation, and shall order the fine imposed to be enforced, and shall increase the correction if the disobedient person is again in default.

ART. 1947. When a witness does not appear on account of his illness, or because he is prevented from appearing, the person interested may request that the court go to the house of the sick person in order to receive his declaration immediately after the other witnesses have been examined.

When a witness is absent from the judicial district, the party in interest may request that letters rogatory be issued for his examination, addressed to the judge of the town of his actual residence.

ART. 1948. The witnesses and the notary, in a proper case, shall be examined separately and in such manner that none of them shall have knowledge of the declarations of those who preceded them.

The clerk shall certify that he is acquainted with the witnesses.

Should he not be acquainted with them, he shall require that they be identified by two other witnesses.

ART. 1949. If the official character of the notary who was present

at the execution of the verbal will is not well known, it shall also be proven in a proper case.

ART. 1950. The judge shall, under his liability, see that in the declarations are stated the age of the witnesses and their place of residence at the time of the execution of the will.

ART. 1951. When the wishes of the testator have been inscribed upon some *cédula* or private document, it shall be shown to the witnesses in order that they may state if it is the same that was read to them, and whether they acknowledge as genuine their respective signatures and rubrics, if the same had been affixed by them.

ART. 1952. If, from the declarations of the witnesses, it is clearly and positively shown—

1. That the testator had the serious and deliberate purpose of executing his last will.

2. That the witnesses, and the notary, in a proper case, simultaneously heard from the lips of the testator all the dispositions he desired to make as his last will, either by word of mouth or by reading or having read some note or memorandum containing the same.

3. That the number of witnesses was the number required by law, according to the circumstances of the time and place where the will was executed, and that they possess the qualifications required to serve as witnesses to wills.

The judge shall declare the result of such declarations to be a will, without prejudice to third parties, and shall order that the papers in the case be filed in a protocol.

ART. 1953. When any contradictions appear in the declarations of the witnesses, the judge shall approve as the will only such statements as are agreed upon by all the witnesses.

If the last wishes of the testator should have been set forth in a statement presented or written at the time of the execution, the result thereof shall be taken as the will, provided that all the witnesses agree that it is the same paper that was written or presented at said time, even if some of them do not remember some of its dispositions.

ART. 1954. The filing shall take place in the protocol of the notary of the seat of the judical district, and should there be more than one, in that designated by the judge.

TITLE VII.

OPENING OF SEALED WILLS AND THE FILING IN PROTOCOLS OF TESTAMENTARY MEMORANDA.[1]

ART. 1955. Any person having in his possession any sealed will must present it to the judge of competent jurisdiction as soon as he learns of the death of the testator.

[1] Article 714 of the civil code maintains the force of the provisions of this title.

ART. 1956. Any person having knowledge of the execution of a will, and that it is in the possession of a third party, may also demand its presentation.

If the petitioner be a stranger to the family of the deceased, he shall make oath that he is not influenced by malice, but that he believes that he may in some way have an interest in the will.

ART. 1957. The court clerk shall at once examine the envelope which contains the will, and shall make a memorandum of its condition, describing minutely the reasons, if there be any, for suspecting that it has been opened, altered, amended, or erased.

This memorandum shall also be signed by the person presenting the will, and if he is unable or refuses to sign the same, a witness, at his request, may do so in the first case, and two witnesses selected by the court clerk in the second case.

ART. 1958. The court clerk shall immediately thereafter report the matter to the judge, who, after the death of the testator is proven, shall order that on the following day, or before if possible, the notary before whom the will was executed and the attending witnesses be cited to appear.

ART. 1959. After the witnesses have appeared, the sealed envelope shall be presented to them for examination, and they shall declare under oath whether they acknowledge the genuineness of their own signatures and rubrics which appear thereon, and whether they find it in the same condition as at the time it was signed.

If any of the witnesses were unable to sign and another did it for him, the two shall be examined, and the signature shall be acknowledged by the person who wrote it.

ART. 1960. The witnesses shall be examined successively in their order, and shall be questioned as to their age the day the will was executed.

ART. 1961. If one or more of the witnesses should have died or be absent, the others shall be asked if they saw him affix his signature and rubric, and furthermore two other persons acquainted with the signature and rubric of the deceased or absent witnesses shall be examined with regard to their similarity to those which appear on the envelope.

If this can not be done, the other evidence to that effect shall be taken in the ordinary manner.

ART. 1962. In case of the death of the notary before whom the will was executed, the mark (*signo*), signature, and rubric on the envelope or wrapper shall be compared by the judge, assisted by two experts appointed by himself, with those appearing on the copy of the will, which must exist in the special register of sealed wills, for which purpose the judge shall go to the place where the same is kept, and if that be not possible he shall commission the proper person therefor.

Should the execution have taken place prior to the time the notarial law went into effect, the comparison shall be made with other signatures and marks of the same notary of undoubted authenticity.

ART. 1963. If the notary and all the witnesses have died, evidence of these facts shall be taken, as well as of the time of their death, their public reputation, and whether they were in the town when the will was executed.

ART. 1964. The relatives of the testator who may be presumed to be interested may, if they so desire, be present at the opening and reading of the will, but shall not be permitted to oppose the performance of any proceeding, even should they present a subsequent will.

ART. 1965. After the aforementioned proceedings have been performed, and it appears therefrom that in the execution of the will the formalities prescribed by law have been observed, and that the envelope is authentic, the judge shall open the same and shall read to himself the testamentary dispositions contained therein.

The opening shall be postponed when on the said wrapper or in an open codicil the testator shall have ordered that it be not opened until a certain time, in which case the judge shall suspend the proceedings, and shall file the proceedings taken together with the closed will in the court until the time designated by the testator arrives.

ART. 1966. After the judge has read the will and codicil he shall deliver it to the clerk to be read aloud, unless it should contain a request of the testator that some clause or clauses be reserved and kept secret until a certain time, in which case the reading shall be confined to the other clauses of the testamentary disposition.

ART. 1967. After the will has been read the judge shall order that it be filed, together with the original proceedings had at the opening thereof, in the registry of the notary before whom said will was executed, and that a copy of said order be given to the person who presented the will, should he request it, for his protection.[1]

ART. 1968. Any person having in his possession any testamentary memorandum must present it to the judge of competent jurisdiction as soon as he learns of the death of the testator, and shall request that

[1]The former law of civil procedure specifically determined what rules of article 1208, reproduced in articles 1812 *et seq.* of the present law, were applicable to the act of voluntary jurisdiction expressly mentioned in the law; and among the same the seventh rule was not included, which is equivalent to article 1817. Thus the supreme court would have established that the filing in the protocol of a secret will could not be denied after it was opened with the proper formalities, on account of the opposition of a person interested (decision of January 20, 1880); but at the present time we do not believe that this doctrine is compatible with article 1824 of the new law, which extends all the general provisions relating to voluntary jurisdiction to the acts specially mentioned, in so far as they are not opposed to what is prescribed with regard to each; and article 1817 does not oppose any precept contained in articles 1956 *et seq.*

it be filed and state why it is in his possession. With the document he shall present documentary evidence of the death of the testator and shall present an authentic copy of the will, containing such identification marks as may be necessary to show that it is genuine and the existence of the will.

If said documents are not presented, the said judge shall order that they be produced and attached to the record.

ART. 1969. Upon the document the clerk shall draft a statement, sufficiently detailed, of the actual condition of the memorandum and the circumstances by which its identity with that indicated in the will may be proven.

This statement shall be signed by the person presenting the memorandum; and if he does not know how, or does not desire to sign, the provisions prescribed in the second paragraph of article 1957 shall be observed.

The clerk shall immediately make a transcript of the clause or clauses of the will presented which refer to the memorandum, returning the will to the person presenting the same, who shall sign a receipt therefor.

ART. 1970. The judge shall order that the memorandum be read, and that the identification marks thereupon be compared with those stated in the will, setting a day and hour therefor. Those interested in the will may be present at the proceedings, for which purpose they shall be notified of the time fixed and be advised that their absence shall not prevent the proceedings from being held nor be a reason for their nullity, whatever be the causes alleged for nonattendance.

ART. 1971. Should the memorandum be under sealed cover, the judge shall proceed to open and read the same in secret, and if no disposition of the testator should be found therein ordering that some clause of the will be not published until some certain day or time he shall deliver it to the court clerk to be read aloud.

Should any such provision be found therein, the reading of the clauses to which it refers shall be omitted, and no certificate of said clauses shall be issued, the memorandum remaining sealed and filed in the archives until the day or time designated by the testator.

ART. 1972. The examination and comparison of the identification marks stated in the will for the purpose of proving the authenticity of the memorandum shall be immediately performed.

A proper record of this proceeding shall be made, which shall be signed by the judge and the other parties in interest who may be present.

ART. 1973. If it appears from the proceedings that the memorandum contains the conditions required by the testator in order that it be considered authentic, a ruling shall be made ordering it to be filed, without prejudice to any right which the parties in interest may have to impugn it in the proper action.

ART. 1974. The filing shall be done in the registry of the notary before whom the will was executed, and together with said will. Should this be impossible, the notary shall make a marginal note in the record of the will, stating the existence of the memorandum and the book and folio at which the same is filed.

ART. 1975. When the testator has made reference to some memorandum in his own handwriting, or only signed by him, without mentioning any other special mark of identification, as soon as said memorandum, accompanied by the documents mentioned in article 1968, has been presented, the judge shall order that they be examined by three witnesses thoroughly familiar with the writing of the testator, and he may also designate any relatives for that purpose who are not beneficiaries under said memorandum.

Said witnesses or relatives shall declare under oath that they have no reasonable doubt that the said document was written by the testator, and if only signed by him, that it is his signature and rubric.

ART. 1976. Furthermore, if the judge thinks it proper, he may, with the assistance of two experts, compare the handwriting, signature, and rubric of the memorandum with any others of the testator of undoubted authenticity found in any public document or office of the State.

ART. 1977. Should the memorandum prove to be authentic, the judge shall order it to be filed as prescribed in article 1973.

ART. 1978. If the memorandum is presented while proceedings are pending to elevate a verbal will to a public instrument or for opening a sealed will, the said memorandum shall be attached to the record and the aforementioned proceedings shall be observed for the filing thereof.

TITLE VIII.

PROCEEDINGS TO DISPENSE WITH THE LAW.

ART. 1979. Proceedings to dispense with the law must be instituted by virtue of a royal order communicated to the judge by his immediate superior, except in the cases mentioned in article 1831.

ART. 1980. When the royal order has been received by the court it shall be complied with, and the person who obtained it shall be ordered to present the necessary evidence of the facts stated in his petition or of those required by the royal order.

ART. 1981. If during the proceedings the person interested requests that evidence be extended to other facts which were unknown to him when he signed the petition or that he believes to be of great interest, the judge may grant the request if he should consider such facts to be important.

ART. 1982. These proceedings shall be held after the *promotor fiscal* has been cited to appear. The persons who have a known and legiti-

mate interest in the subject shall also be cited to appear if it has been so ordered by the royal order, or when the petitioner so requests.

ART. 1983. The court clerk shall certify as to the identity of the witnesses. If he does not know them, he shall require that two other witnesses shall identify each one of them, and that they sign the declarations of those not identified by the court clerk.

ART. 1984. If any person has been cited to appear in the proceedings, he shall be heard if, after being cited, he requests that the record be delivered to him.

The witnesses and documents which he may submit as to the facts which are the subject of the proceedings shall also be admitted.

ART. 1985. When the person cited does not appear within the period designated therefor, the hearing of the proceedings shall be continued with the intervention of the *promotor fiscal* only, unless the person cited be a minor or incapacitated person, in which case his appearance shall be indispensable, and for this purpose his legitimate representative shall be compelled to appear within the period fixed by the judge and propose whatever may be proper for the interests of the minor or incapacitated person.

ART. 1986. If during the pendency of proceedings taken without citation any person should appear and oppose the dispensation requested, he shall be heard if he has a legitimate and known interest in the opposition.

ART. 1987. For the authentication or comparison of documents the presence of the *promotor fiscal* shall be indispensable.

If a part of the document only is to be authenticated, or if the copy to be compared is not complete, the *promotor fiscal* shall indicate in the same statement whether or not there is any difference in the omitted part which modifies or contradicts the part authenticated or compared.

ART. 1988. After the measures ordered to be taken at the instance of a party or by the royal order have been had, the record shall be delivered to the *promotor fiscal* for his written opinion thereon.

ART. 1989. If the *promotor fiscal* should find that the witnesses have not been identified in the manner prescribed in article 1983, or should find any other serious defect, he shall request that it be cured. He may also request that such steps be taken as he may deem necessary for a true classification of the facts on which the petition for dispensation is based, and the citation of the parties who, having a legitimate interest in opposing the granting thereof, have not been cited at the proper time when they should have been cited in accordance with article 1982.

ART. 1990. If the *promotor fiscal* finds the proceedings completed, he shall report upon the merits of the matter.

ART. 1991. After the *promotor fiscal* has been heard the judge shall

render his decision, which he shall transmit, with the ercord, to the superior court in the customary manner.

ART. 1992. The chamber of administration of said court shall hear the public prosecutor thereupon, and after curing any defects which the record may contain, shall agree upon the report to be sent to the colonial department, to which shall be transmitted the original record, with a certified copy of the report of the public prosecutor. If any justice should dissent from the majority, he may make a separate report, which shall be attached to the majority report.

TITLE IX.

INVESTITURE OF POWER TO APPEAR IN COURT.[1]

ART. 1993. Legitimate children not emancipated and married women, when not authorized to appear in court by law, must be vested with power therefor by the father or by the mother, if under parental control, or by the husband.

ART. 1994. Investiture can only be granted when the person requesting it is included in one of the following cases:

1. When the parents or husband are absent and their whereabouts is unknown, there being no good reason to believe that they will soon return.

2. When the father, the mother, or the husband refuses to appear in court on behalf of the son or wife.

3. When an action has been instituted against the petitioner.

4. When the petitioner would be greatly prejudiced if he did not institute the action for which he requests investiture.

ART. 1995. The *promotor fiscal* shall always be heard in these proceedings.

ART. 1996. The ruling granting the investiture to a legitimate son not emancipated shall also order that he be provided with a curator *ad litem* in the manner prescribed in Section IV of Title III of this book.

ART. 1997. Investiture of power shall not be necessary for the son or the married woman to litigate against a parent or husband.

ART. 1998. Proceedings instituted for the purpose of granting authority because the father or husband refuses to represent the son or the wife, shall be heard and determined according to the procedure established for incidental issues.

The same procedure shall be observed when, before granting the power requested on account of the absence or unknown whereabouts of the father or husband, he appears and opposes the said power.

ART. 1999. Should the father or husband appear after the power is

[1] See note to article 2.

granted, his opposition shall be heard and determined according to the procedure established for incidental issues.

The power granted shall be in full force and effect until a final decision is rendered.

ART. 2000. The power granted shall cease to have any effect as soon as the father or the husband appears in court on behalf of the son or wife.

TITLE X.

PROCEEDINGS TO PERPETUATE TESTIMONY.

ART. 2001. Judges shall admit and order that all proceedings to perpetuate testimony instituted before them be taken, provided they do not relate to facts which may prejudice some determinate and certain person.

ART. 2002. No proceedings of this character shall be had without first hearing the *promotor fiscal.*

ART. 2003. After the petition has been allowed the witnesses presented by the petitioner shall be examined with a citation of the *promotor fiscal* upon the facts stated in the petition.

The court clerk shall certify to his acquaintance with the witnesses. Should he not be acquainted with them, he shall require that they be identified by two other witnesses.

ART. 2004. After the proceedings have been had the record shall be referred to the *promotor fiscal.* If the latter should find that some errors have been committed, or that the witnesses do not possess the qualifications required by law, or if it should appear from their statements that some certain and determinate person may be prejudiced, he shall recommend whatever he may consider proper in each case.

ART. 2005. If the *promotor fiscal* should request that some measure be taken, and the judge should consider it proper, he shall order that it be taken, and upon the execution thereof he shall again refer the record to the *promotor fiscal.* If the latter should be of the opinion that some certain and determinate person may be prejudiced, and the judge should consider his opinion well founded, the judge shall render a decision denying his approval thereof.

ART. 2006. If the *promotor fiscal* should request that the petition be approved, and if the judge should consider it proper, he shall render a decision approving what may be proper according to law, and ordering, if it relates to facts of acknowledged importance, that it be filed in the protocol of the register of the court clerk, if he is also a notary, and otherwise in that of another notary residing in the town which is the seat of the judicial district, and if there be more than one, then of any who may be designated by the person in interest.

If the facts embraced in the proceedings should not be of well-

known importance, the judge shall order that the record be filed in the office of the court clerk.

ART. 2007. An order shall also be contained in the same ruling requiring that an authenticated statement of the proceedings be furnished to the petitioner, if he should so request, as well as to any other person who may desire said statement, in order to impugn it in the proper action, if he may be prejudiced thereby.

ART. 2008. If, before the approval of the proceedings, any person should appear and object thereto by reason of their being prejudicial to him, the judge shall order that the proceedings of voluntary jurisdiction be discontinued, reserving their rights to the parties, which they may exercise in the proper action.

ART. 2009. Proceedings relating to possession for the purpose of recording some property right in real property shall be had in accordance with the rules prescribed in the mortgage law in force in the colonial provinces, in the regulations for its execution, and in other provisions in force.

TITLE XI.

ALIENATION OF THE PROPERTY OF MINORS AND INCAPACITATED PERSONS AND SETTLEMENT OF THEIR RIGHTS OUT OF COURT.

ART. 2010. Judicial permission shall be necessary in order to alienate or encumber the property of minors or incapacitated persons which pertains to the following classes:

1. Real property.
2. Public securities and commercial paper of all kinds, whether made payable to bearer or order.
3. Rights of all kinds.
4. Jewelry, personal property, and precious objects which may be preserved without deterioration.[1]

ART. 2011. In order to decree a sale it shall be necessary:

1. That the father or the mother, in a proper case, of the child not emancipated should request it. If said child be over 12 or 14 years of age, respectively, according to sex, it shall also sign the petition.
2. That in the absence of a parent, the tutor of the minor, the curator of an incapacitated person, or the minor, together with his curator request it.
3. That the reason for the alienation and the purpose to which the amount obtained is to be applied be stated.
4. That the necessity or utility of the alienation be proven.
5. That the *promotor fiscal* be heard in the matter.

ART. 2012. If the proof, referred to in number 4 of the foregoing article, is to be furnished by witnesses, there must be at least

[1] The provisions in force hereon are articles 164 and 270 to 275 of the Civil Code.

three, and the clerk shall identify them. Should he not be acquainted with them two witnesses for the purpose of identification shall be required.

The evidence shall be taken after the *promotor fiscal* has been cited to appear.

ART. 2013. After the evidence has been taken, and after the *promotor fiscal* has been heard, the judge without further proceedings shall render a decision, granting or denying the authority to make the sale.

This ruling may be appealed from for review and a stay of proceedings.

ART. 2014. The authority shall be granted in all cases under the condition that the sale must be made at public auction, after an appraisement, if property mentioned in numbers 1, 3, or 4 of article 2010 is involved.

Sales made by the father, or mother, in a proper case, exercising parental authority, are excepted from the foregoing rule. Such sales may be made without any other requisite than that of having first obtained judicial authority with a hearing of the *promotor fiscal* and of the persons mentioned in articles 219 and 213 of the mortgage laws respectively in force in the islands of Cuba and Porto Rico.

ART. 2015. The judge shall always appoint the experts for the appraisement, who can not be challenged. Neither can the third expert be challenged, if it should have become necessary to appoint one upon disagreement of the first two experts.

ART. 2016. After the appraisement has been made, the judge shall order that the sale be announced for a period of thirty days, designating the day, hour, and place where it is to take place, and that edicts be posted in the customary places, inserting them also, should he deem it proper, in some official newspaper.

ART. 2017. No bid shall be received which does not amount to the sum at which the property was appraised.

ART. 2018. If no admissible bid has been received, the tutor or curator may make any of the following requests:

1. That he be permitted to withdraw from further proceedings in the matter, and that the proceedings be discontinued.

2. That he be authorized to make the sale extrajudicially, for the price and under the conditions which served as the basis for the public sale.

3. That a second sale be announced, with a reduction of twenty per cent of the appraised value.

If he makes the second request, and if no extrajudicial sale can be made within one year from the time when the first public sale was attempted, he can request that another public sale be announced, subject to the aforementioned reduction.

ART. 2019. The second public sale shall take place with the same rmalities as are prescribed for the first.

If in this sale there should be no admissible bid, the judge may authorize the tutor or curator to make an extrajudicial sale for the price fixed for said second public sale.

ART. 2020. When the sale is requested for the payment of debts or other necessary purposes, a third public sale may be held, at the request of the tutor or curator, with a reduction of another twenty per cent from the price fixed for the second sale.

If no admissible bid is received at this sale, the representative of the minor may be authorized to sell the property extrajudicially at the price fixed for the third public sale.

ART. 2021. The securities referred to in number two of article 2010 shall always be sold through a stockbroker or agent, whom the judge shall appoint, and at the current official quotations.

If not quoted on exchange they shall be sold according to the formalities prescribed in the foregoing articles for the sale of real property.

ART. 2022. After the sale is made the judge shall, under his liability, see that the amount received at said sale be applied as stated in the petition for authorization to make the sale.

ART. 2023. The amount received shall be delivered to the tutor or curator, pending its application, if he has been exempted from furnishing bond or if he has furnished bond sufficient to secure the same. Otherwise it shall be deposited in the public establishment in which judicial deposits are made.

ART. 2024. The authority to settle questions out of court relating to the rights of minors or incapacitated persons shall be requested by the same persons that request the sale of property.

The reason for and the purpose of the settlement must be stated in the written petition, as well as the doubts and difficulties of the business and the reasons that exist for believing it profitable and proper; the petition shall also be accompanied by a document in which the basis for the transaction shall be set forth.

All the documents and data necessary for the purpose of forming an exact judgment in the matter shall also be presented with the petition.

ART. 2025. If an action should be pending with reference to the right to be settled out of court, the documents shall be filed with the record thereof.

ART. 2026. If, in order to demonstrate the necessity of the settlement, the proof of some fact or the taking of certain steps should be necessary or proper, the judge shall order that it take place with the citation of the *promotor fiscal*.

ART. 2027. After the provisions of the foregoing article have been observed, the record shall be delivered to the *promotor fiscal* in order that he may make such statements as he may deem proper.

ART. 2028. After the record has been returned by the *promotor fiscal* the judge shall make an order granting or denying authority for the

settlement, as he may consider best for the interests of the minor or incapacitated person.

If it be granted he shall modify or approve the bases submitted, ordering that an authenticated statement of the proceedings, with the necessary enclosures, be delivered to the tutor or curator for the proper effects.

These orders may be appealed from for review and for a stay of proceedings.

ART. 2029. For the purpose of mortgaging or incumbering real property or for the extinction of property rights belonging to minors or incapacitated persons, the formalities shall be observed which are established for the sale of property, with the exception of those prescribed for public sales.

TITLE XII.

ADMINISTRATION OF PROPERTY OF ABSENT PERSONS WHOSE WHEREABOUTS ARE UNKNOWN.[1]

ART. 2030. When the whereabouts of a person who has absented himself from his domicile for more than two years is unknown, leaving his property abandoned, and there is no evidence of his death, any of his nearest relatives, who would be heirs *ab intestato*, may request that the administration of said property be transferred to them under bond.

ART. 2031. The person who presents the petition mentioned in the foregoing article must present the documents which prove his relationship with the absentee, and a statement of the property whose administration he requests, with a report of the income received or which may be received therefrom.

He shall also furnish evidence as to the following facts:

1. The absence and unknown whereabouts of the person referred to, the date or time when he absented himself, and the time when last heard from.

2. That there is no one authorized by the absentee to care for and administer his property.

3. That the petitioner is the nearest relative of the absentee, with a statement, in a proper case, of those who possess the same degree of relationship.

ART. 2032. The judge shall take the evidence with a citation of the *promotor fiscal.*

This evidence must be given by at least three witnesses who may have been friends or had business relations with the absentee. The court clerk shall certify that he is acquainted with said witnesses, and

[1] The Civil Code has considerably modified the provisions of this title, as may be observed by consulting articles 181 to 186 and others thereof.

should he not know them two witnesses for identification shall be furnished.

ART. 2033. If from the evidence the facts mentioned in article 2031 should be proven, the judge shall order the publication of two edicts, each at an interval and for a period of two months, calling upon the absentee, and those who believe themselves entitled to the administration of his property, should the absentee not appear, to present themselves.

These edicts shall be published at the place of the last domicile of the absentee, and in the place where the property is situate, and shall be inserted in the *Gaceta* of the general government, and in the *Boletin Oficial* of the province, should there be one. They shall also be inserted in the *Gaceta de Madrid* should the judge consider it proper.

Said edicts shall also contain the names of those who have requested the administration of the property, their relationship with the absentee, and shall require that those who believe themselves to have a better right, appear before the court and prove the same with the proper documentary evidence.

ART. 2034. After the expiration of the period fixed in the second edict, and after the petitions of those who have appeared have been attached to the record, it shall be delivered to the *promotor fiscal* for six days in order that he may report upon the propriety of granting the administration of the property of the absentee to the relatives, as well as upon the rights of the claimants.

The *promotor fiscal* may also recommend the correction of any error that may have been committed in the course of the proceedings, in which case the corrections shall first be made.

ART. 2035. When but one relative has requested the administration and the *promotor fiscal* does not oppose the same, the judge shall grant it without further proceedings, should he deem it proper.

The same shall be done when there are two or more petitioners who have stated their agreement which person or persons should be entrusted with the administration.

ART. 2036. With the exception of the cases mentioned in the foregoing article, the judge shall call a meeting of the claimants within eight days in order that they may agree as to their rights and which of them is to be entrusted with the administration.

A proper record of the result of said meeting shall be made and signed by the persons present, and also by the judge and the court clerk.

ART. 2037. If an agreement should be reached at the meeting, the judge shall order that it be executed, provided that it is proven that the whereabouts or existence of the absentee is unknown, that the property is abandoned, and that the persons selected to take charge of the administration are relatives of the said absentee.

ART. 2038. If no agreement is reached at the meeting, within the three following days the judge shall decide what he may consider proper, and order, in a proper case, that the administration be granted at once to the nearest relative or relatives named by himself, without prejudice to the rights of the other persons interested, which they may make use of in the action which may be proper in view of the amount of the property.

This decision may be appealed from for review only.

ART. 2039. The administrator appointed shall furnish bond to the satisfaction of the judge, in amount sufficient to cover the income of the property for five years at least.

This bond may be of any of the kinds recognized by law, with the exception of a personal bond.

In order to fix the amount of the bond the judge may order, should he deem it proper, that the amount of its income be appraised by an expert of his own appointment.

ART. 2040. After the bond has been furnished by the administrator, the judge shall order that he be given the proper certificate of appointment and that the property be delivered to him under an inventory which shall be prepared by the court clerk, with citation of the *promotor fiscal* and the other relatives of the same degree of relationship, who are not administrators.

At the same time the judge shall order that a memorandum be made in the property register of the absence and unknown whereabouts of the owner of the real property and of the appointment of an administrator, the proper orders being issued therefor.

ART. 2041. The administrator shall be entitled to the compensation which the judge may determine, which can not exceed ten per cent of the income from the property; and he shall be obliged to keep an account, properly vouched, of the receipts and expenses, for submission to the owner thereof when he presents himself, or to his heirs or successors in interest.

ART. 2042. In the following cases the proceedings shall be discontinued, whatever be their stage:

1. When the absentee appears in person or by means of a duly empowered agent.

2. When positive advice is received of the existence and whereabouts of the owner.

3. When the decease of the absentee is proven and his testamentary heirs or intestate heirs appear.

4. When a third person appears and presents proper documentary evidence that he has secured, by purchase or otherwise, the property of the absentee.

In such cases if an administrator had been appointed he shall cease performing his duties, placing the property at the disposal of those who are entitled thereto.

ART. 2043. If the absentee should have made a will, and the testamentary heirs present an authentic copy thereof, they may request the administration of the property according to the provisions of the foregoing articles.

ART. 2044. If the property of an absentee whose whereabouts is unknown has been abandoned for more than two years, the judge may, at the instance of the *promotor fiscal*, or of any other person, even though not a relative, order that such measures be taken as may be considered necessary for the security and temporary administration of the property, after evidence of the facts mentioned in numbers 1 and 2 of article 2031 has been received, and without prejudice to the procedure established in this title, to cite the relatives to appear and provide for the administration of said property.

ART. 2045. If a legitimate party should make any opposition to the proceedings prescribed in this title, based upon the statement that the same are improper, it shall be heard and determined according to the procedure established for incidental issues in Title III of Book II.

Until such opposition is heard and determined the judge may adopt such measures as he may consider necessary for the security and administration of the property, should the same have been abandoned.

ART. 2046. When, on account of the presumed death of an absentee, a testamentary or intestate succession may be opened, as soon as such fact is determined in the proper proceeding, the procedure prescribed for testamentary or intestate proceedings, as the case may be, shall be observed.

TITLE XIII.

VOLUNTARY JUDICIAL PUBLIC SALES.

ART. 2047. Any person requesting that a judicial public sale be made shall, by presenting the proper documents therefor, prove the following:

1. That he has the legal capacity to make the proposed contract.
2. That he can dispose of the thing or object at public sale as proposed.

ART. 2048. With the petition in which a public sale is requested shall be presented the document of conditions according to which the same is to be held.

ART. 2049. After the facts mentioned in article 2047 have been proven, the judge shall order the publication of the notice of public sale, in the manner and under the conditions proposed by the petitioner; he shall set a day and hour for the sale; he shall order that edicts be posted in the customary places and in the town in which the property is situate or in which the contract is to be executed, and that they be published in the newspapers designated by the petitioner.

The edicts shall state that the document of conditions for the sale and the title deed to the property are on file in the court clerk's office for the information of those who may be interested in the public sale.

ART. 2050. If any proposition is made, which is admissible by reason of its being in conformity with the conditions fixed in the document of conditions of sale, the judge shall admit the same, as well as subsequent higher bids. At the close of the bidding the sale shall be made to the only or the best bidder, unless the petitioner has expressly reserved the right of approval, in which case the record shall be delivered to him, so that he may, within three days, make such request as he may deem proper.

The same shall be done if any bidder has made an offer upon the condition that some of the conditions be modified.

ART. 2051. If the petitioner should accept the proposition referred to in the second paragraph of the foregoing article, a decision shall be rendered adjudging the sale to the person making such proposition, and the same shall be carried into effect.

If said proposition is not accepted, the petitioner shall state whether or not he approves the sale, or whether he desires a new sale, under the same conditions or under such conditions as he may designate, or whether he desires to abandon his intention.

ART. 2052. When a new public sale is to take place, the notices of sale shall state that all offers shall be necessarily admitted, provided they cover the minimum amount fixed by the petitioner.

ART. 2053. If in the second public sale there be no bidder, the interested party shall be at liberty to do what he may deem most advisable, provided that no third public sale shall be attempted until after the expiration of one year, after which time he may petition that new proceedings be instituted for the same purpose.

ART. 2054. The questions which may arise during the proceedings shall be heard and determined according to the procedure prescribed for incidental issues.

TITLE XIV.

JUDICIAL POSSESSION IN CASES IN WHICH SUMMARY PROCEEDINGS TO ACQUIRE POSSESSION DO NOT LIE.

ART. 2055. In order that judicial possession of an estate or estates which have not been acquired by inheritance may be decreed, the person desiring the same shall request it of the judge, attaching to his petition:

1. The title upon which he bases his request, recorded in the property register.

2. A certificate issued by the person in charge of said registry, which shows that on said date the petitioner has, with regard to the estate or

estates, as set forth in the title which he presents, and the possession of which he demands, the character under which he requests it.

ART. 2056. The judge shall examine the title presented, and if he finds it sufficient, he shall render decision ordering that possession be given without prejudice to a third person having a better right thereto.

ART. 2057. Possession shall be given by a bailiff (*alguacil*) of the court, aided by the clerk, to any of the properties involved and in the name of the others.

ART. 2058. The person obtaining possession may designate the lessees, tenants, or managers who are to be required by the court clerk to recognize him as the possessor of the property.

Said official shall make a memorandum of the act of vesting possession and of the proceedings performed by him.

ART. 2059. If the person obtaining possession should so request, an authenticated copy of the order ordering possession shall be given him and of the proceedings had in its execution.

In all cases the evidence of the title shall be returned to the person presenting it, a receipt and a memorandum thereof being attached to the record.

TITLE XV.

SURVEYS AND DEMARCATIONS.

ART. 2060. The survey and demarcation of a piece of land may be requested not only by the owner thereof, but also by any person having a property right therein for its use or enjoyment.

The petition shall state whether the survey is to be made of the entire area within the perimeter of the land, or only in the part which borders upon some determined estate, and shall designate the names and residence of the persons to be cited to appear at the survey, or that such persons are unknown to the petitioner.

ART. 2061. The judge shall set a day and hour upon which the survey is to begin, notice being given long enough in advance so that all persons interested may be present, who shall previously be legally cited to appear.

Unknown persons, and those whose residence is unknown, shall be cited by means of edicts which shall be posted in the customary places in the seat of the district, of the town in which the estate is situate, and of that in which the person cited lately resided.

ART. 2062. If the judge can not be present at the survey, he shall commission the municipal judge of the district in which the property is situate to be present.

ART. 2063. Neither the survey nor the demarcation shall be suspended, if the latter was requested, on account of the nonappearance of any of the owners of the adjoining estates, but they shall have the

right to institute such declaratory action as may be proper, for such possession or ownership of which they may consider themselves to have been dispossessed by reason of said survey.

ART. 2064. The person who may have requested the survey, as well as the others present at the proceedings, may present the titles of their estates and make such claims as they consider proper, either in person or through an attorney appointed for the purpose.

If one or more of the parties request it, experts appointed by themselves, or by the judge, who may be familiar with the land and who can furnish the information necessary for the survey, may be present thereat.

ART. 2065. If the survey and the demarcation, in a proper case, is made without opposition, a separate statement shall be made of all the circumstances necessary to locate the dividing line of the estates, the monuments placed or ordered to be placed, their direction and distance from each other, as also all important questions which may have arisen and their decision. This statement shall be signed by all the parties present.

ART. 2066. If the proceedings can not be concluded in one day, they shall be suspended to be continued at the earliest possible day, which fact shall be stated in the statement.

ART. 2067. Copies of the statement shall be given to the interested parties who request the same, and it shall be filed in the protocol of the notarial office of the court clerk who authorized it, if he is a notary; otherwise in that of the town or notarial district in which the property surveyed is situate, and should there be several, in that selected by the judge.

ART. 2068. The court clerk shall draft a memorandum in the record to the effect that the survey and demarcation were performed, stating the notarial office where the statement is filed, a receipt for which shall be signed by the notary in the statement itself.

ART. 2069. If, before beginning the survey, objections are raised by the owner of any adjacent land, the survey of that part of the land which adjoins that of the opposing party shall be suspended, the parties reserving their rights, which they may exercise in the declaratory action which may be proper.

The same shall be done if any objection is raised during the proceedings, if the parties in interest can not at once agree upon the matter in dispute.

In either case the survey of the remainder of the estate may be continued at the request of the petitioner, if the other adjoining owners do not object thereto.

PART SECOND.

ACTS OF VOLUNTARY JURISDICTION IN COMMERCIAL MATTERS.

TITLE I.

GENERAL PROVISIONS.

ART. 2070. Proceedings for the purpose of establishing facts of interest to persons who request the taking of evidence thereupon in commercial matters shall be had before courts of first instance.

ART. 2071. Notwithstanding the provisions of the foregoing article, the proceedings to which it refers may be instituted before municipal courts in towns which are not the seat of a judicial district, or before Spanish consuls in foreign countries when the urgency of the business requires it, or when means of proof exist, or the merchandise or goods are, or the facts occurred at the place or within the jurisdiction of the said courts or consulates.

In such case the municipal judge or the consul to whom application is made shall issue an order stating the attending circumstance by which he becomes vested with jurisdiction in the matter.

ART. 2072. If the proceedings referred to in the two foregoing articles be instituted within Spanish territory, they shall be subject to the provisions prescribed for each case in the Code of Commerce or in this law.

If no special rules have been established for the matter involved, in addition to the general provisions prescribed in the first part of this book which may be applicable thereto, the following rules shall be observed in the proceedings:

1. If there are third persons who may be prejudiced by the proceedings, they must be cited to appear thereat if they so desire, without prejudice to the right of any one else attending who believes that he is interested in the subject which is being heard.

The judge shall, without hearing any arguments (*de plano*), dismiss all requests presented by persons who are known to have no interest in the matter.

2. In cases in which the proceedings are liable to affect public interests, or present or absent persons who enjoy special protection of law, or unknown persons, the *promotor fiscal* in the seats of judicial districts and the municipal *fiscales* in the other towns shall be cited to appear.

3. The clerks of courts in the courts of first instance and the secretaries of municipal courts shall certify to the identity of the persons

who request the intervention of the respective judges, and to that of the witnesses, when evidence is taken, in a proper case.

When such persons are unknown they shall prove their identity by documentary evidence or by the testimony of persons who know them. In case there is no way to prove their identity, the fact shall be stated in the record.

4. The intervention of third persons who may be cited to appear, that of the *promotores fiscales*, and in a proper case, that of the municipal *fiscales*, shall be limited to the acquisition of information as to the personality of the parties to the proceedings, and as to their legal capacity to appear therein. For this purpose the record shall be delivered to them when completed, before a judicial decision is rendered, so that they may allege whatever they may deem proper in the matter. Any other claim made by them in any matter other than those affecting the indentity or legal capacity of said parties shall only be considered as a reservation by them of the right to enforce such claim at the times and in such manner as they may deem proper.

5. If the claims made by third persons, by the *promotor fiscal* or municipal *fiscales*, relate to defects which are susceptible of correction, the judge shall order what may be necessary to conclude the proceedings as soon as possible.

6. The judge in view of all the proceedings had shall decide what he may consider proper, and shall order the record filed, the interested parties being given certified copies of such parts thereof as they may request.

7. When, by virtue of the provisions of article 2071, the proceedings have been had before a municipal judge, after he shall have performed the most essential and urgent parts thereof, he shall transmit the same to the judge of first instance, and the latter shall conclude them in the proper manner, immediately complying with the provisions of the foregoing rule.

ART. 2073. Appeals interposed by the persons who instituted the proceedings shall be admitted for review and a stay of proceedings, those interposed by others who subsequently appear in the action may be appealed from for review only.

ART. 2074. When an appeal has been interposed and admitted, the record shall be forwarded within two days, after summoning the persons interested to appear within eight days, if it be before a judge of first instance, and ten days, if before the audencia.

ART. 2075. In appeals from decisions rendered by municipal judges, as soon as the record is received by the judge of first instance, if the appellant should present himself before the expiration of the period fixed in the summons, the judge shall order the persons interested to be called to appear before him within three days, when they shall be heard, the proper minutes being made of what they may declare.

Within three days after such appearance is entered the judge shall render such decision as he may consider proper.

Appeals to the audiencia shall be heard and determined according to the procedure prescribed for incidental issues.

ART. 2076. Should the appellant not appear within the period designated in the summons, the provisions established in articles 839 et seq. shall be observed.

ART. 2077. No appeal shall lie from decisions rendered in second instance, but the interested parties shall reserve the right to enforce their claim in the action which may be proper, according to the amount involved.

ART. 2078. The examinations and appraisements shall be made by licensed experts, provided there are any at the place where the proceedings are pending, and in their absence, by persons experienced in such matters.

An exception will be made if the party in interest at whose instance the examination or appraisement is made, asks that it be done at his own expense by a licensed expert.

Whenever, owing to a disagreement between two experts, it is necessary to appoint a third one to settle the difference, the third one shall be selected by lot, taking into account the provisions of article 615.

ART. 2079. When, according to the provisions of article 2071, Spanish consuls take cognizance of any act of voluntary jurisdiction, they shall conform as far as possible to the provisions of this law.

TITLE II.

THE DEPOSIT AND EXAMINATION OF COMMERCIAL EFFECTS.

ART. 2080. If as a result of the provisions of articles 121, 122, 218, 222, 365, 674, 745, 777, 781, and 988 of the Code of Commerce, or for any other similar cause, it becomes necessary to make a deposit of commercial effects, the person instituting proceedings shall present a written request therefor to the judge, containing an itemized statement of the goods sought to be deposited, and designating the person who is to be the depositary and who must be a registered merchant, should there be any at the place, and in his absence some taxpayer who pays taxes sufficient in the opinion of the judge to be a sufficient guaranty, taking into account the value of the deposit and the conditions of the place.

In any case it is the privilege of the judge to weigh the guaranties offered by the depositary designated by the person who requests the deposit, and if he concludes that another person should be appointed he shall make such appointment, subject to the provisions of this article.

ART. 2081. If the deposit is requested in view of the contingency

provided for in article 777 of the above-mentioned Code, the person requesting the same shall also request an expert examination of the vessel, and shall furnish evidence to prove that no other vessel can be found in any port within 160 kilometers in which to ship said merchandise.

This fact may also be proven by documentary evidence.

ART. 2082. The court clerk shall make a record of the deposit, which shall state the quantity and condition of the goods deposited, and in case there should be any difference between said record and the written statement made by the person requesting the deposit, such difference shall be noted.

ART. 2083. If the court clerk or the depositary should not agree to the statement of the quantity or quality of the goods enumerated by the person who requested the deposit, and if the latter should not consent to a correction thereof, in case of a difference in quantity, the clerk shall make a minute recount of the goods in the presence of the depositor and the depositary. If the difference should relate to quality, the judge shall appoint an expert to classify the same, making a proper record thereof.

This expert shall be chosen by lot from among the members of the brokers' association, should there be any, and in its absence from among the registered merchants dealing in merchandise like that to which the goods belong, and they can not be challenged.

ART. 2084. In the case mentioned in the foregoing article the judge shall temporarily provide for the custody and preservation of the goods which are to be deposited.

ART. 2085. Should it become necessary for the judge to order the sale of some of the deposited merchandise, in order to meet the expense of the deposit and preservation, the sale shall be made by public auction, after an appraisement by an expert appointed by the owner of the merchandise, should he be present, or by the representative of the department of public prosecution, should the owner be absent, and by another expert appointed by the judge. Notice of the sale shall be announced for a period of from eight to fifteen days by edicts, which shall be posted on the bulletin boards of the court, and may be inserted in the *Boletin Oficial* of the province, where there is one, or in the *Gaceta* of the general government, at the discretion of the judge, according to the value of the merchandise.

If the owner of the merchandise should be present and consents that the judge appoint but one expert, this shall be done. If the owner should decide to appoint one, and his expert can not agree with the expert appointed by the judge, a third shall be selected by lot.

ART. 2086. If there be no bidder at the public sale, or the bids offered are not equal to two-thirds of the appraised value, a second public sale shall be ordered, and even a third, if necessary, within an

equal period of time, with a reduction of twenty per cent in each sale from the amount which served as a basis for the previous sale.

ART. 2087. In case that the doubts and contentions referred to in article 218 of the Code should arise, the interested persons, should they not agree upon the appointment of experts, shall apply to the judge to appoint them. When this is done, the experts shall present their opinion, and if they do not agree, the judge shall appoint by lot a third.

If the interested persons, notwithstanding the expert examination, can not harmonize their differences, the deposit prescribed in the said article shall be ordered.

ART. 2088. When it is necessary to secure a statement of the condition, quality, or quantity of the goods received, or of the packages in which they are contained, according to the provisions prescribed in articles 219, 361, and the second paragraph of article 370 of the Code, and in other similar cases, the person interested shall apply to the judge, requesting him to have a record thereof made, and, if necessary, to appoint an expert to examine the merchandise or packages.

Should the persons interested agree that each shall appoint an expert, they shall so request, and in case of disagreement a third shall be selected by lot.

TITLE III.

ATTACHMENT AND TEMPORARY DEPOSIT OF THE VALUE OF BILLS OF EXCHANGE.

ART. 2089. In the cases in which, according to the provisions of articles 496 and 507 of the Code of Commerce, it is necessary to attach or order the temporary deposit of the value of a bill of exchange, the person requesting the same shall present a written petition therefor to the judge.

ART. 2090. The judge, in view of the petition, shall order that the proper person be required to deposit the value of the bill of exchange. If no agreement is reached between the parties, this deposit shall be made in the public establishment provided therefor; and if this can not be done, with a registered merchant of recognized responsibility, or, in his absence, with some person having the latter qualification.

ART. 2091. After the attachment or deposit has taken place, the judge shall set a reasonable period within which the petitioner shall present the duplicate bill of exchange, or request in a proper action the definite attachment of the value thereof, and he shall be admonished that if said action is not instituted within said period, the attachment or temporary deposit shall be vacated.

This period shall be determined, taking into account the distance and facility of communication which exist with the place of issue of said bill of exchange, and may be extended for just cause, in the opinion of the judge.

TITLE IV.

CLASSIFICATION OF AVERAGES AND LIQUIDATION OF GROSS AVERAGE AND CONTRIBUTION THERETO.

ART. 2092. When it becomes necessary to furnish the proof mentioned in article 945 of the Code of the losses suffered and the expenses incurred, which constitute the common or gross average, the captain of the vessel, within a period of twenty-four hours after arriving at the port of discharge, fixed in article 670 of said Code, shall present to the judge a written statement giving a brief account of all that occurred during the voyage, according to the log book, and shall request permission to open the hatches, designating for this purpose the expert selected by him to assist in the operation.

A statement of all proceedings had at his instance at other ports of call, together with the log book, shall be presented with the said statement.

ART. 2093. After the statement mentioned in the foregoing article is presented, the judge shall on the same day, if possible, after citing and hearing the parties in interest or their consignees, receive the declarations of as many of the sailors and passengers as he may consider necessary, with reference to the facts alleged by the captain in his statement. After such testimony is received he shall give permission to open the hatches.

This shall be performed in the manner prescribed in article 2132.

ART. 2094. After the hatches have been opened and the condition of the cargo is proven, in order to proceed to the classification and examination of the damages and the amount thereof, the judge shall order that the captain of the vessel and the interested persons or their consignees be required to select experts within twenty-four hours, under the admonition that if such selection is not made, said experts shall be appointed *ex officio* by the judge.

The captain shall name an expert for each kind of goods to be examined, the interested persons or the consignees shall appoint another, and the judge shall select a third by lot in case of disagreement.

ART. 2095. After the experts are appointed or designated *ex officio*, as the case may be, they shall accept and take oath for the faithful performance of their duties in the manner prescribed in article 947 of the Code, and the judge shall fix a brief period within which they are to present their report.

ART. 2096. The experts shall classify the averages and shall indicate with the greatest possible precision:

1. The simple or particular averages.
2. The gross or common averages.

ART. 2097. After the experts have presented their report it shall be subject to examination in the clerk's office for a period of three days, during which time the persons interested may appear before the clerk and give the reasons they may have for not agreeing thereto.

ART. 2098. If any of the parties should not agree to the report of the experts, the judge shall, on the day following the period prescribed in the foregoing article, call a meeting of the interested parties for the next day. In such case the evidence offered shall be received and a record of the entire testimony be made.

ART. 2099. Within two days the judge shall render a decision ordering whatever he may consider proper.

This decision may be appealed from for review only.

ART. 2100. When all of the interested parties have agreed to the expert report as to the liquidation of the averages or the decision mentioned in the foregoing article has been rendered, the judge shall order that the same experts, within the period he may fix, make a statement of account and of the basis of settlement of the gross and common averages.

ART. 2101. In making up this account the experts shall prepare four statements:

1. The damages and expenses considered as common averages or the sum of the averages.

2. The goods subject to contribution for the common averages or for the sum of the averages to be imposed.

3. The distribution of the sum of the damages among the goods subject to contribution.

4. The cash contributions and reimbursements.

ART. 2102. Both in the case of the foregoing article as well as in the case of article 2095, should the experts not perform their duty within the period fixed, the judge shall *ex officio* compel them to do so.

ART. 2103. As soon as the experts shall have presented the four statements referred to in article 2101, they shall be placed in the office of the clerk for examination for a period of six days; for the purposes mentioned in articles 2097 *et seq.*

ART. 2104. Should all of the interested parties consent to said statements, the judge shall approve the distribution. If the meeting prescribed in article 2098 has been held, the judge shall, within three days, render a decision approving the distribution as recommended by the experts or with such modifications as he may consider proper.

This decision may be appealed from for review and for a stay of proceedings.

ART. 2105. If the captain of the vessel does not comply with the duty imposed upon him by article 962 of the Code to enforce the distribution, the owners of the damaged goods may apply to the judge to compel him to do so.

ART. 2106. In case the owners of the damaged goods make the application mentioned in the foregoing article, the judge shall order that the captain be required to enforce the distribution within such brief period as he may designate under the admonition that the captain will become liable for his tardiness or negligence.

ART. 2107. When the contributors do not settle their respective quotas on or before the third day, if the captain of the vessel, after the distribution has been approved, should make use of the right granted him by article 963 of the Code, the deposit and public sale of so much of the saved goods as may be necessary to cover said quotas may be proceeded with at the instance of the captain.

This public sale shall be held in the manner prescribed in articles 2085 and 2086.

TITLE V.

DISCHARGE, ABANDONMENT AND INTERVENTION OF MERCHANDISE AND BOND FOR THE CARGO.

ART. 2108. If the captain of a vessel is obliged to call at a port, and should consider it necessary for the better preservation of all or a part of his cargo to unload and reload the same and did not have or could not secure the consent of the shippers, he shall apply to the judge in writing or in person in case of emergency in order to obtain the authority required by article 775 of the Code.

ART. 2109. In order to obtain said authority the captain shall request that the cargo be examined by experts, one to be named by himself and another appointed by the representative of the department of the public prosecution on behalf of the absent shippers, the third to be selected by lot by the judge, in case of disagreement.

ART. 2110. The judge shall order that the examination be made, and if it appears from the report of the experts that the unloading is necessary he shall order the same.

ART. 2111. A certified copy of all proceedings shall be delivered to the captain of the vessel.

ART. 2112. In the case of general cargoes, if one of the shippers desires to discharge his merchandise, and the others desire to take advantage of the rights granted them by article 765 of the Code, they shall apply to the judge, asking that they be allowed to take charge of the merchandise sought to be discharged, and shall deposit its value according to the invoice price.

ART. 2113. If the application referred to in the foregoing article is made in the manner prescribed by law, the judge shall consent thereto, and shall order the owner of the goods to receive the amount deposited.

In case the owner of the goods does not wish to receive the price thereof, they shall be disposed of in the manner prescribed in article

2050, the owner reserving any right which he may have against any person and in the manner he may consider proper.

ART. 2114. For the purpose of discharging the cargo by reason of an arrival under stress, referred to in article 974 of the Code, the captain of the vessel shall request that the vessel and the cargo be examined by experts in order that they may state that the arrival was necessary in order to make the repairs which the vessel needed, or in order to avoid damage or injury to the cargo.

The appointment of these experts shall be made in the manner prescribed in article 2109.

ART. 2115. If the experts should be of the opinion that the discharge is necessary, the judge shall order it made, taking the necessary steps for the preservation of the cargo.

ART. 2116. In case that the captain of the vessel should make the declaration of averages referred to in article 976 of the Code, as soon as the goods are examined by experts, as prescribed in article 977, if in their opinion it is to the interest of the absent shipper that they be sold, the sale shall be made in the manner prescribed in the following title.

ART. 2117. In case of abandonment for the payment of freight, referred to in article 790 of the Code, if the freighter should not be satisfied, the shippers shall request the judge, with the intervention of the former, to proceed to the weighing or measuring of the vessels which contain the liquids which it is proposed to abandon.

ART. 2118. After the weighing or measuring is performed as ordered by the judge, if it should result that the vessels have lost more than the half of their contents, he shall order that they be delivered to the freighter.

ART. 2119. In order to authorize the intervention mentioned in article 794 of the Code, the captain of the vessel may request it in writing and the judge shall grant it in the manner which will produce the least possible injury.

ART. 2120. If security for the value of the cargo becomes necessary, in accordance with the provisions of article 805 of the Code, the captain shall request it of the judge, attaching to his request the documentary evidence of said value.

ART. 2121. The judge, in view of the written request and the documents presented, shall determine whether or not security should be furnished, and if proper shall fix the amount and class thereof as requested by the captain of the vessel.

If the security be in cash, it shall be deposited immediately in the manner prescribed in article 2090.

TITLE VI.

SALE AND MORTGAGE OF MERCHANDISE IN URGENT CASES AND THE REPAIRING OF VESSELS.

ART. 2122. In the cases mentioned in articles 151, 593, 608, 614, 644, 653, 798, 825, 978, 979, 985, 990, and 991 of the Code the following rules shall be observed:

First. Whenever it becomes necessary, according to the provisions of articles 151, 978, and 979 of the Code to sell damaged goods or goods that have been altered to such an extent as to render their sale urgent, the commission merchant having charge thereof, or the captain of the vessel transporting the same, shall petition the judge therefor, stating the number and class of the goods to be sold. The petition shall be accompanied, in a proper case, with a statement, signed by the captain of the vessel, showing the amount of cash on hand, and shall also furnish evidence of the efforts made to obtain a bottomry loan of the necessary amount and the failure thereof.

Second. Upon the presentation of the petition, without prejudice that in a proper case the evidence mentioned in the foregoing rule may be taken, the judge shall appoint at once an expert who shall examine the goods the same, or at the latest on the following, day.

Third. As soon as the expert reports upon the condition of the goods, and if it appears that a sale is necessary, and after said evidence has been received, in a proper case, the judge shall issue an order ordering its appraisement and public sale, and he shall adopt such measures as will give it the utmost publicity, taking into consideration not only the value of the merchandise, but also the greater or lesser urgency of the sale according to its state of preservation.

Fourth. The sale of goods saved from shipwreck shall be subject, according to circumstances, to the proceedings mentioned in the foregoing rules. The judge who has ordered their deposit shall order the sale of the same, *ex officio*, when proper.

Fifth. If the proceeds from the sale are not to be immediately applied, they shall be deposited in the manner prescribed in article 2090, subject to the order of the person entitled thereto, after deducting the amount of all costs and expenses.

Sixth. In order to show the necessity for the sale of a vessel which, during its voyage, has been rendered useless for further navigation, and can not be repaired sufficiently to continue her voyage, her captain or master may petition the judge that she be examined by experts. The written petition shall be accompanied by the entrance papers of the vessel, to which article 648 of the Code refers, and the log book, so that the court clerk may enter on the register an authentic record thereof.

The appointment of experts shall be made in the manner prescribed in article 2109; and if from the expert report both conditions are affirmed, the judge shall order the sale with the formalities prescribed in article 608 of said Code. The amount received from said sale shall be deposited as in the case provided for in the foregoing rule, after all costs and expenses have been deducted.

Seventh. In all of the cases referred to in the foregoing rules, when in the first public sale there should be no bidder, or the bids offered do not cover two-thirds of the appraisement, a second or subsequent sales shall be announced for the same length of time, with a reduction of 20 per cent in each.

Eighth. When a vessel is in need of repairs and any of the owners refuse to give their consent thereto, or do not provide the necessary funds, the person believing said repairs to be necessary shall apply to the judge, requesting that the ship be examined by experts.

After the vessel has been examined by the experts appointed by the petitioner and the person opposing the petition, and a third in case of disagreement, and it is found that the repairs are necessary, the judge shall order that the party refusing to furnish the necessary funds be required to furnish the same within a period of eight days, and he shall be admonished that if he does not do so he shall be deprived of his interest in the vessel upon payment to him by the coowners of the amount of the true value of such interest before the repairs were made.

This true value shall be determined by the same experts who examined the vessel, and the amount so determined, if the coowner refuses to receive it, shall be deposited in the manner provided in the foregoing rules, said coowner reserving the right to institute any proper action in the matter according to its import.

Ninth. When the captain of a vessel, according to the provisions of articles 644 and 826 of the Code, requires judicial permission in order to contract a loan on bottomry, he must request it by furnishing such evidence or by presenting documents which prove the urgency of said loan and that he has been unable to secure funds by any of the means enumerated in the first of the articles cited. He shall also request the judge that he appoint an expert to examine the vessel and determine the amount necessary for the repairs, rehabilitation, and purveyance of said vessel.

The judge, in view of the expert report, shall order the publication of two notices, which shall be posted in the customary places and inserted in the *Boletin oficial* of the province, where there is one, or in the *Gaceta* of the general government, and in said notices shall be succinctly stated the request of the captain of the vessel and the amount which the expert may have determined.

When authority to contract the loan has been granted by the

judge, if in addition to this the captain can not secure the sum necessary, he may request the sale of that part of the cargo which may be necessary.

This sale shall be made after an appraisement by experts appointed according to the provisions of article 2109 and at a public sale, announced and verified according to the formalities prescribed in the foregoing rules.

Tenth. In case that the captain of a vessel has been obliged to compel the owners of provisions carried on their own particular account to deliver them for the common use of the persons on board, and the owners thereof do not agree that necessity therefor existed, or if they are dissatisfied with the amount offered by the captain in payment for said provisions, either the captain or the owners, in order to prove the facts, may institute judicial proceedings at the first port of arrival.

After proceedings are instituted, the judge shall hear the interested persons, and if they do not agree to the amount offered by the captain in payment of the provisions, the proceedings shall be terminated and the owners may institute such judicial action as they may consider proper.

If the amount at issue should not exceed 1,000 pesetas it shall be heard and determined in an oral action; if it exceeds this sum it shall be subject to the procedure established for incidental issues.

Eleventh. If the freighter desires to make use of the rights granted to him by article 798 of the Code, he shall petition the judge that the consignee be required to pay immediately the amount due for freight, and if not paid, for authority to proceed to the judicial public sale of such part of the cargo as may be necessary, in the manner prescribed in the foregoing rules.

After the requisition has been made upon the consignee, and if he refuses or neglects to make said payment, the judge shall order that such part of the cargo as may be necessary be deposited, said part being designated by experts appointed by the interested parties, and a third one which the judge shall select by lot in case of disagreement.

If, after the sale has been made, the proceeds should not be sufficient to cover the indebtedness, at the instance of the freighter and with the same formalities, said deposit may be increased and a subsequent sale ordered.

In case the consignee should interpose opposition, the amount received from the sale shall be deposited in the establishment provided therefor until it shall be decided in a proper action whether or not payment shall be made.

The complaint must be presented within twenty days, and the action heard and determined according to the procedure prescribed for incidental issues. If said action is not instituted within said period, the judge shall, *ex officio*, raise the deposit and deliver the amount due to the freighter.

TITLE VII.

OTHER COMMERCIAL ACTS REQUIRING PEREMPTORY JUDICIAL INTERVENTION.

ART. 2123. In the case referred to in article 307 of the Code, if any of the copartners believe that the person in charge of the management, and who has authority to sign for the firm, is making an improper use of these powers, and they desire to appoint a comanager, they shall present a written request to the judge, asking that he receive evidence in the matter; and if the improper use of said powers be proven, then the person designated by them shall be appointed comanager.

The said petition shall be accompanied with a copy thereof, which shall be delivered to the managing partner at the time the citation is served upon him.

ART. 2124. The managing partner may present such contrary evidence as he may consider proper and the documents which prove his good business management.

ART. 2125. After the evidence has been presented the judge shall hear the interested parties and shall then decide whether or not a comanager should be appointed.

ART. 2126. If it is decided that a comanager should be appointed, the judge shall name the person designated by the partners who requested the same.

Should the managing partner plead well-founded reasons for opposing the appointment of the person proposed, the parties in interest shall be cited to another hearing, and should they not agree, the appointment shall be made of another person designated by the partners.

ART. 2127. Any partner who desires to make use of the rights granted him by articles 308 and 310 of the Code, or of those of a like nature which result from the contract or articles of copartnership, if the manager should refuse to allow it, he may appeal to the judge, in writing, and he shall order at once that the books and papers of the company which he wishes to examine be placed at his disposal.

If the managing partner refuses in any manner to exhibit the books and papers, the judge shall take the steps necessary to compel him to do so.

ART. 2128. When a part owner of a vessel desires to exercise the right of redemption, to which article 612 of the Code refers, or to make the prevention according to the provisions of article 613, it shall be sufficient for him to serve notice thereof within the legal period to the vendor or to his copartners, by means of a notarial instrument, depositing in the first case the price of the sale with the notary.

ART. 2129. In any of the cases provided for in articles 751, 752, 753, 754, 760, and 761 of the Code, after the complaint is filed with the judge,

and after summary proceedings, the judge shall make a proper decision and shall order that the captain of the vessel and other proper persons be required to perform the same.

ART. 2130. The captain of a vessel who, in order to avoid liability in case of danger, should desire to open the hatches in order to show the good ballasting of the cargo, shall request for the same judicial permission, and shall immediately designate the expert on his part to assist in the act.

ART. 2131. After the request is presented the judge shall order that the shippers and consignees, should they be at the place, and in their absence, the representative of the department of public prosecution, appoint another expert. When the experts are appointed, the permission requested shall be granted.

ART. 2132. The hatches shall be opened in the presence of the court clerk, the experts, and the captain of the vessel; the shippers and consignees may also be present; after the cargo is examined by the experts a statement thereof shall be made, which shall be signed by all those present.

Should the experts disagree, the judge shall select another by lot.

ART. 2133. After the proceedings are concluded the original statements shall be delivered to the captain, should he desire to use them at another port.

ART. 2134. In the cases in which the captain of a vessel may have to prove the causes for the average arrivals under stress, shipwreck, or any other fact which might cause him to incur liability for not having acted in the manner prescribed in the code of commerce, he shall present a written petition to the judge requesting that the depositions of the crew and passengers be received with regard to the truth of the facts set forth.

Said written petition shall be accompanied by the log book.

ART. 2135. The judge on receipt thereof shall receive the evidence offered and shall order that a certified copy of the part of the log book which refers to the occurrence and the causes therefor be made and that all the original proceedings be afterwards delivered to the captain.

TITLE VIII.

APPOINTMENT OF ARBITRATORS AND EXPERTS IN INSURANCE CONTRACTS.

ART. 2136. When, in accordance with the provisions of article 324 of the Code, the judge is required to intervene in the appointment of arbitrators, any of the parties in interest may request that a reasonable time be designated for the purpose of making the appointment.

If the time named should elapse without the appointment being made, the judge shall make it *ex officio*, naming the persons who in his opinion are competent and impartial for the decision of the question at issue.

ART. 2137. Should the interested parties not agree to the appointment of the arbitrators in the cases referred to in articles 323, 345, and 989 of the Code, and as prescribed in any other in which arbitrators should be appointed, any of the parties in interest may apply to the judge and request that he appoint said experts.

When the written petition requesting the appointment is presented, the judge shall set a time, which shall not exceed ten days, in order that the interested parties may make the appointment themselves; after which, if the appointment is not made, the judge shall proceed according to the provisions of the second paragraph of the foregoing article.

ART. 2138. When it has been stipulated that the decision of any question be subjected to the decision of amicable compounders, the appointment of these shall be made in the manner prescribed in the preceding articles.

ART. 2139. When the appointment of experts as provided in article 879 of the Code is proposed with regard to a stipulation for the increase of the premium on insurance, one expert shall be selected by each of the interested parties.

This selection shall be made in writing, accompanied by the policy of insurance.

ART. 2140. Should the experts not agree, the judge shall appoint a third by lot.

ART. 2141. After the amount of the increase has been determined the judge shall order that advice thereof be given to the proper persons.

ART. 2142. In the cases in which by reason of the contract of insurance it becomes necessary that the loss be judicially shown, that the amount thereof be appraised, and that the merchandise damaged be sold, the provisions of preceding titles applicable to analogous cases shall be applicable thereto.

FINAL PROVISION.

ART. 2143. All laws, royal decrees, regulations, orders, and local laws in which rules of procedure have been established are hereby repealed.

Rules of civil procedure prescribed in the mortgage law and other special laws are excepted from this provision.

APPENDICES.

APPENDIX I.

CHANGES IN AND AMENDMENTS TO THE CIVIL PROCEDURE OF THE ISLAND OF CUBA MADE BY THE MILITARY GOVERNMENT DURING THE YEARS 1899 AND 1900.

No. 41.

HEADQUARTERS DIVISION OF CUBA,
Havana, April 14, 1899.

The military governor of Cuba directs the publication of the following order:

ORGANIZATION OF THE SUPREME COURT.

I. A supreme court is hereby created, which shall sit in the capital of the island and which shall have and shall exercise jurisdiction throughout Cuban territory. No other court or tribunal shall have the same title, character, or category.

II. The supreme court shall be composed of a president or chief justice, six associate justices, and one fiscal, two assistant fiscals, one secretary or chief clerk, two deputy clerks, and such other subordinate employees as may hereinafter be provided for.

III. The subordinate employees shall be six clerks for the secretary, three "*alguaciles*," one doorkeeper, two laborers for the court, two clerks, and one "*alguacil*" for the fiscal.

IV. As a court of justice, the supreme court shall sit as a single body, consisting of the president and the six associate justices. Five justices shall constitute a quorum to render judgment, but three may direct the course of pleadings and procedure. In appeals from sentences involving capital punishment or so-called perpetual penalties, or when the fiscal or plaintiff shall apply for the infliction of any such penalties, not less than seven justices shall sit at the hearing. All decisions and rulings must be concurred in by a majority of the justices sitting. In case of disagreement, the question shall be decided according to the law of procedure.

V. If on account of valid objection to one or more of the justices, or for any cause, the number of justices is reduced below that required for a quorum, substitutes may be had in the following order: First, the president of the audiencia of Havana; second, the presidents of the different departments of the said audiencia; and third, the judges of the same. Among those of equal grade, the senior judge in length of service shall be preferred, and in case two or more shall have the

same length of service, preference will be determined by seniority of age. This last rule will also be applied in cases wherein a member of the court is substituted for the chief justice. If the case before the court involves a decision either previously concurred in or rendered in a case in which any of the substitutes have taken a part, other substitutes following next in order as above shall take their places, and the disqualified judge or judges shall refrain from sitting on the case.

VI. The provisions of the foregoing article shall likewise apply in all civil cases in which the justices may be divided in opinion and there shall be lacking the number requisite to decide the issue.

CONSTITUTION AND ATTRIBUTES OF THE SUPREME COURT.

VII. The supreme court, in addition to its functions as a court of justice, shall also meet in administrative session. When sitting as a court of justice, the supreme court shall have jurisdiction in the following cases:

1. Criminal actions which may be hereafter expressly and specifically placed under its jurisdiction.

2. Criminal actions instituted against the chief justice, associate justices, fiscal or assistant fiscals of the supreme court.

3. Criminal actions against the president of any audiencia, or against the president of one of the sections of an audiencia.

4. Criminal actions against the chief clerk or any of the deputy clerks of the supreme court for criminal offenses in connection with the discharge of their official duties.

5. Criminal actions against the secretary of an executive department of the government or against the civil governor of a province.

In the cases enumerated in the five preceding paragraphs the supreme court shall have exclusive and original jurisdiction to try and decide them in oral and public trial. The court shall designate a judge of an audiencia as a special commission to inquire into such cases and to present them to the court.

6. Actions for civil liabilities against the chief justice or any of the associate justices of the supreme court, or the president of an audiencia or any one of its sections, or a judge of such audiencia or section.

7. Cases of objection to the president of the supreme court or to one or more of its justices.

In the last two cases the court shall proceed according to the methods prescribed by the law of civil procedure.

8. Questions of consolidation or joining of actions and questions of jurisdiction between judges and tribunals who have no other common superior than the supreme court.

9. Review of rulings of audiencias, denying the right of appeal to the supreme court, from decisions in which are alleged errors of law, of legal doctrine, or defects in procedure.

10. Petitions for annulment of judgment for alleged error in law or legal doctrine in cases where the hearing of such petitions may have been admitted.

11. Petitions for annulment of judgment for alleged defects of form in procedure in cases where such petition may have been admitted.

12. The merits of the case itself, where the annulment of the judgment asked for in the petition has been granted by the supreme court on grounds of error in law or legal doctrine.

The provisions of the five preceding paragraphs shall apply both to civil and to criminal matters, except in so far as they refer to appeals for error in legal doctrine which relate exclusively to matters of a civil character.

13. Petitions for annulment of awards rendered by arbitrators.

14. Petitions for revision in civil, criminal, and administrative matters (*contencioso administrativo*).

15. The execution of decisions rendered by foreign courts in accordance with treaties and laws now in force or which may be enacted or decreed hereafter. Cases are excepted which may, by treaty, be placed under the jurisdiction of other tribunals.

16. Proceedings to determine, if hearing should be granted, when judgment by default has already been rendered by the supreme court itself.

17. All extradition proceedings in cases wherein the supreme court itself has jurisdiction.

18. Appeals from the decisions of the audiencia of Havana in administrative cases (*contencioso administrativo*), as well as petitions for reversal of decision in which appeal in such cases is denied.

19. Of any other matter of judicial character which the law may hereafter place under its special jurisdiction.

VIII. The supreme court, when sitting in administrative sessions, is vested with the following authority and powers:

1. To supervise the administration of justice throughout Cuban territory.

2. To decide all matters which may be attributed to it by law, and which are not under the jurisdiction, as above stated, of the court when sitting as a court of justice.

3. To make such reports as the Government may request concerning the administration of justice, the organization of courts and conduct of business therein, the administration and financial affairs of the judiciary, and, in general, the promulgation, repeal, and reform of laws.

4. To propose to the Government what it may deem advisable or necessary in the matters to which the preceding paragraph refers.

5. To exercise disciplinary jurisdiction in the cases specified in the

Digest of Organic Regulations for the Administration of Justice[1] and in the law of procedure in the manner prescribed in said digest.

6. To appoint and remove the subordinate employees of the court, on the recommendation of the president, except as provided for in paragraph 12, Article XIV, and Article XXVII.

7. To exercise such control as the laws may confer upon it over the appointment, oath of office, and installment of judicial officers.

8. To prescribe regulations for the dress of officers of the court, the method of dispatching business, and the maintenance of order in the court.

IX. The supreme court, when in administrative session, shall be composed, as when sitting as a court of justice, of the president and associate justices of the court; but in addition the fiscal or assistant fiscal who may represent him shall invariably be present and shall have the right to speak and vote, except when the question before the court shall involve the exercise of disciplinary jurisdiction. In such cases the fiscal shall confine himself to the ordinary duties of his office, in accordance with the rules mentioned in section 5 of the preceding article.

X. Five of the above-mentioned members of the court shall constitute a quorum to hold administrative session. All decisions shall be made by a majority of the members present, except that in cases involving the exercise of disciplinary jurisdiction, the fiscal or his substitute shall not count to form the aforesaid quorum of five.

XI. The meetings of the court in administrative session shall ordinarily be held weekly, unless there should be no business pending before it; but in exceptional cases the president, if he deem it necessary, may call an extra session at any time.

XII. The court, in administrative session, shall be governed by the rules contained in title 10 of the Digest in all matters relating to the methods of voting and debating, the manner of holding sessions, and attendance upon the same, the duties of the secretary, the recording of the minutes, and of the votes taken, as well as other matter within the province of the court in such session. From this rule are excepted the provisions of article 311 of the Digest, in so far as these relate to the presence of the assistant fiscal, who, when present in place of the fiscal, shall have the right to speak and vote, as prescribed in Article IX.

XIII. The decision of the court, in administrative session, must be accompanied by the reasons therefor, but they need not necessarily have the form of "*resultandos*" and "*considerandos*," which form the court may adopt at its discretion. In a case wherein the court shall concur in the written opinion of the fiscal and the grounds thereof, it shall be sufficient for it to express its conformity with both.

[1] *Compilación de las Disposiciones orgánicas de la Administración de Justicia.* This will hereafter, in this decree, be referred to simply as "The Digest."

THE PRESIDENT OF THE COURT.

XIV. The chief justice shall be the presiding officer of the supreme court, and as such shall have the following powers:

1. To convene and preside over the court, either when sitting as a court of justice or in administrative session.

2. To enforce obedience to this decree and to all laws relating to the duties of his office.

3. To recommend to the government such measures as he may consider necessary or advisable to insure the better administration of justice.

4. To receive and despatch official correspondence.

5. To forward, with his opinion thereon, all petitions, complaints, and reports which the court, the associate justices, or subordinates thereof may present to the government.

6. To receive excuses of the associate justices, officers, and subordinates of the court for nonattendance thereon.

7. To see that all associate justices, officers, and subordinates of the court fully perform their duty, and to issue such orders as he may deem advisable to insure the discharge of their functions.

8. To indicate to the fiscal what he may consider advisable for the better administration of justice, so far as relates to the fiscal and his subordinates, but without communicating directly with such subordinates or restricting in any way the free action of these officials. When he considers it necessary, he will report to the government what he may deem advisable concerning the fiscals and their duties.

9. To report to the court such acts of the associate justices as may deserve disciplinary correction, and also offenses which the said justices may have committed in the discharge of their official functions.

10. To report to the government all vacancies occurring in the court, which should be filled by appointment by the government, as well as all vacancies, due to any cause, which may, for any considerable time, prevent any officer of the court from performing his duties.

11. To hear complaints presented to him by interested parties concerning delay in the administration of justice, in cases pending before the supreme court, or before any audiencia; to take such measures in the case as may be within his authority; to refer the complaint to the court, and, if it refers to a case pending before an audiencia, to call it to the attention of the president of such audiencia.

12. To appoint and discharge, at will, the laborers employed in the court.

13. To establish rules for the good order and preservation of the archives and library of the court.

14. To notify the court when he himself is unable to be present.

XV. The president of the supreme court shall never he designated as "*ponente.*"

XVI. The president of the supreme court shall have authority to decide finally appeals against decisions of presidents of audiencias, in all cases wherein the latter take cognizance of appeals against the opinions of "*registradores de la propiedad*" concerning documents presented for record, whether presented by private parties, or by order of court; there is likewise conferred upon him the authority which the "*reglamento de la ley hipotecaria*" vests in the "*sección de los registros ó del ministerio de ultramar*," and which was later vested in the corresponding section of the department of grace and justice, and government, of the general government of the island, during the autonomist régime.

THE SECRETARY OR CHIEF CLERK.

XVII. The duties of the secretary shall extend to the court in all of its sessions and to the office of the president.

XVIII. It shall be his duty—

1. To keep the seal of the court.

2. To seal and record the letters and other documents ordered by the court to be issued officially or written to interested parties.

3. To keep a book of registry, in which shall be copied literally, the documents mentioned in the preceding paragraph, copies of which shall be issued only on the written order of the court.

4. To have direct charge of the archives and the library of the court, with the responsibilities and duties prescribed in articles 220–225, both inclusive, of the Digest.

XIX. When the court sits as a court of justice, the secretary shall exercise, in the appeals and proceedings before the court, the functions appropriate to his office, as prescribed in the Code of Civil Procedure, and those enumerated in articles 196 and 197 of the Digest now in force.

XX. When his other duties as secretary of the court, or in the president's office, render it necessary, these functions shall be performed by the deputy clerks of the court. In such cases the said deputy clerks shall sign papers and documents and shall perform all the duties proper to be performed by the secretary, whom they represent, but their signatures must be preceded by the words "*por delegación.*"

XXI. The secretary, when the court is in administrative session, shall, in person, attend to the matters before it, and shall not delegate these duties to any other person, except that in case of his absence his duties shall develope upon the senior deputy clerk of the court. Should there be two or more such clerks having equal length of service, the said duties shall develope upon the senior in age.

XXII. As secretary of the president's office, he shall, with the president, despatch such business as may be assigned to him, in accordance with this decree.

THE DEPUTY CLERKS OF THE COURT.

XXIII. The deputy clerks of the court shall issue summons, subpœnas, and notifications; they shall call for records of proceedings held out of court, and perform any other duty to be discharged outside of and by order of the court.

THE FISCAL AND ASSISTANT FISCALS.

XXIV. The fiscal of the supreme court shall be chief of the fiscals of the island, and will be directly responsible to the department of justice only. Articles 456–460, both inclusive, of The Digest are accordingly made a part of this decree, with the exception that for the words "*la monarquía*" there shall be substituted the words "*el territorio Cubano*" in all cases wherein the former expression is used, and for the words "*ministerio de ultramar*" the words "*secretaría de justicia*" shall be substituted.

XXV. Articles 452–465, both inclusive, of The Digest shall also be continued in force so far as they concern the fiscal and assistant fiscals of the supreme court.

XXVI. The assistant fiscals shall assist the fiscal in the duties of his office in such manner as he may direct. When acting for the fiscal they will sign papers drawn up by them, placing before their signatures the words "*por delegación.*"

XXVII. The fiscal shall have authority to appoint and discharge at will the subordinate employees of his office.

SUBORDINATE EMPLOYEES.

XXVIII. The clerks of the secretary's office shall not appear officially in judicial proceedings or pleadings which the officers of the court are required to act upon in person and to authenticate with their own signatures. The secretary or deputy clerks of the court shall supervise and be responsible for the work of the clerks who, in general, shall be under the direct orders of these officers to aid and cooperate with them in the discharge of their duties.

XXIX. The clerk of the fiscal shall have direct charge of the records of that office, and shall render the fiscal services similar to those referred to in the preceding article in regard to the clerks of the secretary.

XXX. The "*alguaciles*" and doorkeepers shall discharge the duties prescribed in article 279 of The Digest for such employees.

XXXI. The president of the court shall regulate the duties of the "*alguaciles*," doorkeepers, and laborers in such a manner as he may deem proper. The fiscal shall do the same with regard to his subordinate employees.

APPOINTMENT, TERM OF OFFICE, PRIORITY, POSSESSION OF OFFICE, OATHS OF OFFICE, AND SALARIES OF FUNCTIONARIES, EMPLOYEES, AND SUBORDINATES IN THE SUPREME COURT.

XXXII. The appointment of all officers of the supreme court, with the exception of the subordinate employees, shall be made by the military governor on the recommendation of the secretary of justice.

XXXIII. Seniority and precedence with officers of the same grade shall be determined by date of appointment; and if the incumbents shall have been appointed by the same decree, all will be considered as of equal rank and the order of precedence will be determined by age.

XXXIV. The president, justices, fiscal and assistant fiscals shall, upon the inauguration of the court, make oath before the military governor of the island in the form that may be required, and shall take possession of their offices, the court sitting in public administrative session. The secretary and deputy clerks shall likewise take oath and assume charge of their duties before the court in public session, as above.

XXXV. The annual salaries of all the officers of the supreme court shall be as follows, and shall be payable monthly in United States money or its equivalent:

The president, six thousand dollars.

The fiscal, five thousand seven hundred and fifty dollars.

The associate justices, five thousand five hundred dollars each.

The assistant fiscals, five thousand dollars each.

The secretary or chief clerk, four thousand dollars.

The deputy clerks of the court, two thousand five hundred dollars.

The clerks of the secretary and of the fiscal, one thousand dollars.

Other clerks, six hundred dollars each.

The doorkeeper and "*alguaciles*," four hundred and fifty dollars.

Laborers, three hundred dollars each.

Should the court or the fiscal deem it necessary they may require one of the last-named clerks of the secretary's office and of the fiscal's office to be stenographers, in which case they shall have an annual salary of one thousand dollars.

XXXVI. The court shall be granted fifteen hundred dollars annually, in United States money or its equivalent, for the purchase of *material*. This amount shall be distributed between the offices of the president and the fiscal, in such proportion as may be decided by the court in administrative session. The president and fiscal shall have authority to disburse their respective amounts in such manner as they may deem proper.

QUALIFICATIONS AND REQUIREMENTS FOR APPOINTMENT TO OFFICE IN THE SUPREME COURT.

XXXVII. To be eligible for appointment to the office of president, justice, fiscal, assistant fiscal, secretary, or deputy clerk of the supreme court, the following requirements must be complied with:

1. The person must be a Cuban, or declare on oath that he accepts Cuban citizenship, provided he be a person included within the provisions of article 9 of the treaty of Paris of December 10, 1898.

2. He must be of age—that is, more than twenty-three years of age.

3. He must be a lawyer.

4. He must not labor under any of the disqualifications or incapacities herein stated.

XXXVIII. The following persons shall not be appointed to any of the aforesaid offices:

1. Those mentally or physically unsound.

2. Those against whom true bills have been found on any indictment whatever.

3. Those who have been sentenced to any "*pena correccional*" or "*aflictiva*" unless he shall have duly completed such penalty, or shall have been totally pardoned.

4. Those who have served a sentence for any offense, which, by reason of the nature of the offense itself, or the character of the penalty, would injure the reputation.

5. Those who are bankrupt, or who have made assignments and have not been discharged.

6. Those persons, not merchants, who have made assignments for the benefit of creditors until their good faith shall have been adjudged.

7. Debtors to the public funds as "second contributors."

8. Persons of immoral or vicious habits, and, in general, those whose acts of omission or commission, though not punishable by law, give them an unsavory reputation.

XXXIX. The offices mentioned in Article XXXVII are incompatible with—

1. The exercise of any other jurisdiction whatever.

2. The holding of any other office or position of the government of a province or municipality.

3. Employment as a clerk or in any other subordinate position in any other tribunal or court.

XL. Articles 76 to 79, inclusive, of the digest are declared applicable to the supreme court, but the reference made in article 77 to article 75 shall be understood as relating to the preceding article of this decree.

XLI. The president and justices of the supreme court, as well as the fiscal and the assistant fiscals, shall not practice the business of lawyer,

solicitor, or notary public; they shall not engage in any industrial, mercantile, or speculative pursuits in the name of themselves, their wives, or other persons, nor shall they take part in any enterprise, such as a commercial company or corporation, as partner, director, managing partner, superintendent, or counsel. Violation of this rule shall be considered as resignation of office.

XLII. Neither the secretary nor any clerk of the court shall practice law or be a solicitor or a notary public. Violation of this rule shall be considered as a resignation of office.

XLIII. To be a subordinate employee of the court, the person must possess the first two requirements of Article XXXVII of this decree, must be able to read and write, must be of good moral character, and free from any of the first four disqualifications enumerated in Article XXXVIII.

O. H. ERNST,
Brigadier-General of Volunteers,
Acting Chief of Staff.

No. 63.

HEADQUARTERS DIVISION OF CUBA,
Havana, May 25, 1899.

The military governor of Cuba directs the publication of the following order:

I. Hereafter the so-called *votos reservados* of the justices of a court, who do not agree with the decision of the majority, shall be public, and shall be recorded in the book of decisions in the same manner as the decision itself, but the dissenting opinions shall be signed only by the dissenting justices.

II. Such dissenting opinions shall hereafter be known as *votos particulares*, and shall be entered in the original records in the same manner as the judgments and immediately after them. When the interested parties are notified of the judgments, they shall likewise be informed of the *votos particulares* given in the case.

III. The above provisions shall apply to dissenting opinions in all rulings of the court. The manner of recording such opinions and of notifying interested parties shall be the same as that usually followed in such cases, except that dissenting opinions shall be signed only by the dissenting justices.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 66.

HEADQUARTERS DIVISION OF CUBA,
Havana, May 31, 1899.

The military governor of Cuba directs the publication of the following order:

I. Hereafter civil marriages only shall be legally valid. The contracting parties may conform to the precepts of whatever religion they may profess, in addition to the formalities necessary to contract the civil marriage.

II. The officials in charge of the execution of the laws respecting marriage shall not accept as legal the written license or consent of the parent, when the same shall have been taken before an ecclesiastical notary, nor shall any such certificate be accepted which is not attested by the civil functionaries.

III. Clergymen of the different religious denominations represented in this island, in performing the ceremony of marriage, shall not be required to take other action than that imposed upon them by their respective religious beliefs; but the performance of this ceremony shall have no civil effect.

IV. All marriages heretofore solemnized in the island of Cuba shall be deemed and adjudged to be valid, and the validity thereof shall in nowise be affected by any want of authority in the person solemnizing the same if consummated with a full belief on the part of the persons so married, or either of them, that they were lawfully joined in wedlock: *Provided*, That such marriage shall be duly recorded within a period of one year from the date of this order.

Record of such marriages shall be made upon presentation of satisfactory proof thereof.

V. The said marriages shall be proved by the presentation of documentary evidence of the same. If no such proof can be furnished the fact of the marriage may be established in the form prescribed in articles 2001 to 2008, both inclusive, of the Law of Civil Procedure, by the declaration of the functionary performing the ceremony, and of the witnesses thereto, or by such other proofs as the law allows.

VI. The regulations to be observed in recording marriages under this order will be issued by the secretary of justice and public instruction.

VII. The fee for performing the ceremony of marriage shall be one dollar in United States money or its equivalent.

VIII. All decrees, orders, laws, or parts thereof in conflict with the provisions of this order are hereby revoked.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 69.

HEADQUARTERS DIVISION OF CUBA,
Havana, June 3, 1899.

The military governor of Cuba directs the publication of the following order:

I. The order of April 24, 1899, whereby an extension of two years, terminating on the first day of May, 1901, was granted for the collection and enforcement of the obligations therein stated, and contracted before the thirty-first day of December, 1898, is hereby modified as specified in the following articles:

II. Except as otherwise prescribed in this order an extension of two years, terminating on the first day of May, 1901, is granted for the collection and enforcement on real estate or its products of all obligations, whether or not secured by mortgage or any other security on real property: *Provided*, That this extension shall not apply to liabilities contracted since the thirty-first day of December, 1898.

III. The said extension shall be for one year only, terminating on the first day of May, 1900, on all obligations, whether or not secured by mortgage, where it may be necessary to enforce collection through levy and sale of city real property, or of rural property in a condition of normal production; but creditors may institute suit at law to collect interest due on all obligations, whether or not secured by mortgage, and on censos or ground rents, provided that said interests shall have accrued since the thirty-first day of December, 1898, and that in case of default of payment collection shall be made on the rents only of said city property or on the rents or products of rural property in a condition of normal production.

IV. At the expiration of the said year of extension creditors shall be at liberty to institute suit to recover principal, interest, and costs due and unpaid on said date or that may thereafter become due, without restriction or limitation of any kind, so far only as city property or the rural property mentioned in the preceding article is concerned.

V. Property, either urban or rural belonging to debtors who may have been declared bankrupt or who may have made assignment for the benefit of creditors shall not be protected from the action of creditors, nor included in the benefits of the extension hereby ordered when the proceedings of bankruptcy or assignment for the benefit of creditors shall have been initiated prior to the sixteenth day of May, 1896.

VI. In like manner city or rural property, in regard to which final judgment of judicial sale shall have been rendered prior to the sixteenth day of May, 1896, either in an ordinary action or in a special executive proceeding, shall not be exempt from the legal action of creditors who, as regards such property, may freely institute suit without restriction or limitation of any kind.

VII. In like manner the provisions of the extension granted shall not apply to rural property abandoned by its owners, nor to property left uncultivated during the remainder of the present year. Property will be considered thus abandoned in cases wherein the owner shall be absent from the country without having provided, through the appointment of an attorney, manager, or any other similar agency, for the management and control of his property.

VIII. It shall be lawful in all cases for creditors to take such judicial action as the law may entitle them to, so far only as may be necessary to secure their right of priority in regard to other creditors, through the attachment of the property and the record of such action in the registry books.

Said judicial action, however, and the attachment of the property, shall not confer on the creditor any right to prosecute his suit otherwise than as prescribed in this order.

IX. The provisions of this order shall not apply to those debts, for the collection of which the creditor may have obtained the control and administration of the property of the debtor in conformity with the provisions of article 1503 of the Law of Civil Procedure.

X. All liabilities for costs, either incurred, or which may hereafter be incurred, in suits against debtors, shall be collected and enforced under the restrictions and limitations prescribed in this order, for the liabilities in which said costs may accrue.

XI. In all proceedings against the products or rents of rural property, the creditor shall, at the time of filing his claim, present a statement from the alcalde of the municipality in which the property may be situated, certifying that said property is in a condition of normal production. The alcade issuing such certificates shall state therein the facts and grounds on which he bases his conclusions. If the alcalde should not think that the property is in the condition claimed by the creditors, he shall so state in writing.

XII. Rural property shall be deemed in a condition of normal production, when, besides the fact that its plant and machinery are in good condition, it shall have produced either in rent or products during the agricultural year of 1898 to 1899 more than 50 per cent of the amount of rents or products obtained from the said property in the agricultural year of 1894 to 1895.

XIII. The certificate issued by the alcade under Article XI of this order shall not be conclusive evidence of the fact therein stated, and it shall be lawful, therefore, for the debtor to submit his denial of said statements. The issue thus raised shall be tried according to the provisions for special or incidental proceedings in Articles 740 *et seq.*, of the Law of Civil Procedure, and the action of the creditor will be stayed until final decision shall be rendered. The burden of proof as to the fact that the production of the property has exceeded the 50 per cent

mentioned in Article XII of this order shall be on the creditor. The debtor shall submit his denial within ten days after the notice of the order of the judge issuing execution against the rent and products of the property in question.

XIV. In the proceedings mentioned in Article XIII of this order no recourse may be had from the decision of the audiencia, which decision shall be final.

XV. When city property, on the rents of which the creditor may have a right to enforce the collection of interest as prescribed in Article III of this order, is occupied by the debtor or by some other person not paying rent, or which may be attached by another creditor without a preferent right, the creditor shall have the right to take such judicial action as the laws may entitle him to, in order so to administer the said property that it may produce adequate rents.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 92.

HEADQUARTERS DIVISION OF CUBA,[1]
Havana, June 26, 1899.

The Military Governor of Cuba directs the publication of the following order:

I. In order to determine the cases in which appeal for annulment of judgment may be had in civil suits, the provisions of articles 1687 to 1695, both inclusive, of the Law of Civil Procedure, shall remain in force as expressed in the said law.

II. To determine the cases in which appeal for annulment of judgment may be had in criminal suits, the provisions of articles 847 to 854, both inclusive, and of 910 to 915, both inclusive, of the Law of Criminal Procedure shall likewise remain in force.

III. The time allowed to establish an appeal for annulment of judgment, in civil as well as in criminal suits, as well as appeals for error in law or legal doctrine or defect in form, shall be five legal days, not subject to extension, counting from the date of the last notification of the decision against which appeal is made. If notice of appeal be not given within the said period, the decision shall be final.

IV. The appeals for annulment referred to in the preceding article shall be established within the time indicated in said article, before the judge or court which may have rendered the decision against which appeal is made.

V. In the petition for appeal shall appear:

[1] See Order No. 114, p. 464.

1. The date of the notification of the decision to the petitioner and that of the last notification to any of the parties in the suit.

2. That of the presentation of the petition itself.

3. The legal ground for the appeal.

4. If it is a question of appeal for error in law or legal doctrine, the law or the doctrine infringed shall be cited with clearness and precision, and in what respect they have been infringed. When the appeal is based on more than one point, these shall be separately stated.

5. If it is a question of appeal for defect in form, it must be stated in what the defect consists, and what steps have been taken to correct it; should it not have been possible to take such steps, it shall be so stated, with the reason therefor.

VI. In no case, either in criminal or civil suits, shall there be any obligation on the part of the appellant to make any deposit whatever for the admission of his appeal.

VII. The court which has rendered judgment, and before which the petition for appeal may have been presented, shall examine without hearing the parties concerned, and shall see:

1. If the appeal has been made against a final judgment, or one which should have such character, or against a ruling which might legally be susceptible of appeal.

2. If the appeal has been requested within the legal limit of time.

3. If it is based on any of the causes specified in articles 1690 and 1691 of the Law of Civil Procedure, or in articles 849, 911, 912 of the Law of Criminal Procedure, and the corresponding paragraphs 850, 851, 852, and 853 of the law itself.

4. In a case of appeal for error in law or legal doctrine, whether in the petition for appeal, the laws or legal doctrines supposed to have been infringed are stated with clearness and precision, and wherein they have been infringed.

5. If the appeal be for defect in form, the court will see if due exception has been taken in cases wherein such appeal may be possible under the law.

6. If appeal be made in a criminal case, the court will see whether or not the appellant be included in any of the cases enumerated in article 854 of the Law of Criminal Procedure.

7. Whether in the petition are stated the other requirements specified in Article V.

If all these conditions be fulfilled, the court shall render decision within three days, admitting the appeal and giving notice to the parties concerned for their appearance before the supreme court. The period set for such appearance, which shall be without extension, shall be ten days when appeal is made against the judgments of the audiencias of Havana, Matanzas, Santa Clara, and Pinar del Rio, and twenty days if against decisions of the audiencias of Puerto Principe

and Santiago de Cuba. The same rule shall apply if appeal be made against decisions of a judge exercising jurisdiction within these provinces, respectively.

VIII. If appeal should have been made for error in law or legal doctrine, the court, on admitting it, shall order that there be delivered to the appellant within five days a certified literal copy of the decision given and of the negative votes or *votos particulares*, should there have been such in the case, and also the decision of the court of *primera instancia*, if in the latter there may have been accepted and not textually reproduced all or any of their "*resultandos*" and "*considerandos*," as well also as the petition by which the appeal is made and the ruling admitting the appeal. It shall order, further, that the original brief shall be forwarded directly to the supreme court when, by the nature of the case, such brief has been made.

The period to elapse before appearance shall not begin to count until the day following that in which the appellant, who shall be the last notified, shall have received the certified copy above provided for, the date for said appearance being noted on the certificate itself.

IX. If appeal should have been made for defect in form, the court, on admitting it, will order the documents in the case to be forwarded to the supreme court. The period to elapse prior to appearance shall begin to count as soon as the appellant shall have been notified, he being the last notified.

X. When the appellant may have obtained a declaration of poverty in his favor, or may have been defended as insolvent, in any criminal case, he may ask that the aforesaid certificate, which must be delivered to the appellant in appeals for error in law or legal doctrine, be delivered *de oficio;* and in every case he may designate counsel to argue said appeal before the supreme court, or he may ask that such counsel be assigned by the court. These requests, as well as the designation of counsel, must be made by postscript to the document in which appeal is requested, in order that due note of the certificate be made in cases of appeal for error in law or legal doctrine, or of the original papers in cases of appeal for defect in form.

XI. If in the petition made any one of the conditions expressed in Article VII should be unfulfilled, the court before which the request is made shall, within three days, deny the appeal. Against this ruling may be had only the recourse of *queja*. In these instruments will be expressed the exact date of the ruling, of the notification, and of the presentation of the petition for appeal.

XII. Whenever an appeal for annulment is allowed, the court which may have admitted it shall officially communicate the fact to the supreme court, informing it of the date set for appearance.

XIII. The admission of the appeal for annulment shall prevent the execution, either in whole or in part, of the judgment appealed from.

This rule does not admit other exceptions than that of placing a prisoner at liberty, if the finding in a criminal case should be "not guilty;" and in civil cases, in which the party in whose favor judgment may have been rendered, shall give bond sufficient in the judgment of the court to correspond with what he would receive should the annulment be declared. The amount of this bond shall be fixed by the court at its discretion, but on its responsibility.

XIV. A certified copy of the decision denying appeal, as well as of the petition for appeal, shall be delivered to the appellant, with the decision, in order that he may appeal in *queja* to the supreme court. The date of delivery of this copy shall be noted thereon.

XV. In the copy referred to in the preceding article it shall be stated whether or not the appellant has had a declaration of poverty in his favor, or whether or not he has been defended as insolvent in a criminal suit, if the appeal be made in such a case.

XVI. Within two days after the delivery of this copy the appellant for annulment of judgment shall notify the court against whose decision he appeals that he is going to appeal *en queja* to the supreme court. The court will then consider the notification as duly made and will cause the parties to the suit to be notified. The period for establishing such appeal shall be either ten or twenty days, not subject to extension, as provided in Article VII, according to the residence of the court against whose judgment appeal for annulment has been made. These periods shall be counted from the date of the last notification, which shall be that made to the appellant. If the notice be not given, or the recourse of *queja* not taken within said period, the judgment shall be deemed final.

XVII. When notification of intention to appeal in *queja* has been given, the court which rendered the judgment shall transmit to the supreme court, *de oficio*, a certified copy of the notifications referred to in the preceding article.

XVIII. Within the above-expressed period of ten or twenty days petition for appeal should be made before the supreme court, in writing; the original documents shall be forwarded, and as many copies of both papers as there are parties in the suit, including one for the fiscal, in both criminal and civil causes.

XIX. The interested parties may appear, either to sustain admitted appeals for annulment or to establish the recourse of *queja*, either in person or by representative. Such representative must reside in the capital of the island, at least during the progress of the suit, and may be a lawyer in the exercise of his profession, or any person in the full enjoyment of his civil rights, provided he can read and write the Spanish language. So far as they are applicable, the provisions regarding *procuradores*, contained in articles 5, 6, and 9 of the Law of Civil Procedure, except so far as these relate to judicial expenses, shall extend to the aforesaid representatives.

In civil suits these representatives must present a formal power of attorney. In criminal suits it will be sufficient, when appeal is made by the accused, that the representative be appointed in the instrument pertaining to the case, and, in default of express acceptance, appearance by name of the one who may have been designated will be taken as an indication of his acceptance. In such cases the representative of the private accuser, or of the person instituting a civil action, or of the parties civilly responsible, must present a written power of attorney.

The decision of the court shall be imparted to the interested party in person or to his attorney within the period and according to the provisions of article 260 and the first paragraph of article 264 of the Law of Civil Procedure. If the party or his attorney should not appear, the notification shall be made, with full legal effect, in open court.

XX. When the appellant comes under one of the cases foreseen in Article X hereof, he may request, in the document in which he signifies his intention to appeal *en queja*, that the certified copy, which he will return in this case, be transmitted officially to the supreme court; and in a postscript he will designate a lawyer to appeal in *queja*, or he will ask that one be designated *de oficio*. The court shall order that to the certified copy a note be added in which these facts are stated, and will order its transmission *de oficio*.

XXI. The recourse of *queja* being established, and the entire time granted for making it having elapsed, under Article XVI, the supreme court shall order that the copies presented by the appellant, under Article XVIII, be delivered to the other parties present, and to the fiscal, and shall appoint a day for the hearing of the case; the said day must be not sooner than the fourth nor later than the tenth day following that marking the end of the period in which an appeal may be established.

XXII. In the hearing of the case the appellant shall speak first, afterward the other parties, in the order in which they may have appeared, and lastly the fiscal. When the latter is the appellant he shall be heard first. No corrections of record of any kind will be permitted.

XXIII. The supreme court shall decide the question within three days after the hearing, and this decision shall be final. When the supreme court denies the recourse of *queja*, it will communicate this fact to the court against whose decision appeal may have been made, for the necessary action. When the appeal is declared valid, the court will order the appellant to take the measures prescribed by Articles VIII, IX, and X hereof, according to the case.

XXIV. The court against whose decision appeal has been admitted, on request of any party to the suit, and in case of civil proceedings,

may grant a continuation of the case, notwithstanding the notification of intention to appeal; but if the supreme court should deem the appeal well grounded, such proceedings will be suspended, excepting in the case provided for in Article XIII.

XXV. In case of denial of the recourse of *queja* the appellant shall bear the costs.

XXVI. When the appeal for annulment of judgment is admitted, the appellant shall, on presenting himself before the supreme court, accompany his appeal by the following documents:

1. If he should not appear in person, the power of attorney accrediting his lawful representative. From this rule is excepted the case in which the accused, in a criminal cause, may have designated his representative in official documents, according to the provisions of Article XIX, or when, in appeal for defect in form, his representative may be accredited in the documents transmitted.

2. In suits for ejectment, when the petitioner is the renter or tenant, he will also present the document which proves the payment of rent, as provided for in article 1564 of the Law of Civil Procedure. If the said document be not presented with the petition, nor during the period before the hearing, the supreme court, on appearance of appellant before the end of this period, shall declare the appeal groundless and the sentence final; this fact shall be immediately communicated to the court from which the case was sent.

3. As many copies of the petition and of the documents accompanying it shall be furnished as may be necessary for the interested parties, including a copy for the fiscal.

XXVII. The appellant, having appeared before the supreme court, shall await until the entire period before the date set for the hearing has elapsed; the court shall then grant to the parties that may have appeared fifteen days to obtain full knowledge of the proceedings. For this purpose there shall be delivered the copies referred to in the preceding article and the record of the proceedings in the case shall be open for examination in the secretary's office.

At the same time the court shall direct that the secretary officially notify the court from which appeal has been made that the appellant has appeared within the stated time. When he shall not have so appeared, the court shall order the secretary to communicate to the court from which appeal was made that its judgment has been declared final.

XXVIII. During the period of fifteen days referred to in the preceding articles the parties may formulate the following petitions:

1. The appellant may request that there be added to the grounds of appeal for annulment expressed in his petition other grounds, which shall be separately and clearly expressed.

2. The other parties may state in separate and numbered paragraphs,

briefly, clearly, and without argument, the reasons for which they believe the appeal should not be granted if they desire to oppose such appeal. The said parties may state that they are in accord with the appeal which has been admitted, and in this case they will state whether they agree for the same reasons as the appellant or whether they have other reasons. If they have others, they will state them in the manner indicated in paragraph 1 of this article.

XXIX. All parties to the suit, whether appellants or not, may solicit within the period referred to in the preceding article that the tribunal from whose decision appeal is made be asked to furnish any or all of the documents concerning the case when the question is one of appeal for error in law or legal doctrine, provided that the following conditions obtain:

1. That the explanation of said documents in the brief or in the judgment appealed from be insufficient exactly to determine their value and sense.

2. That having such a direct and necessary bearing on the case, the decision of the appeal might depend upon their consideration.

3. Any of the parties may also request that there should be attached to the proceedings certified copies of any documentary proof considered in the case, if the above-described conditions obtain with regard to it.

The documents referred to in this article shall be forwarded as certified copies, it being stated in them that the parties to the suit agree as to their correctness.

XXX. Of the documents referred to in the preceding section, as well as all those produced in appeals for annulment, as many copies should be presented as there are parties to the suit, including one for the fiscal.

XXXI. When one of the parties solicits the documents mentioned in Article XXIX, and the fifteen days provided for in Article XXVII having elapsed, and five days more, during which the other parties shall present such argument as they may deem proper, the case will pass to the *ponente*. On his report the court shall, within three days, pronounce its decision, against which there shall be no appeal.

XXXII. When any one of the parties objects to the admission of the appeal, under paragraph 2 of Article XXVIII, the court, after delivering the copies to the other parties, shall designate a day for a hearing, considering this the previous question. This designation shall be made in accordance with Article XXI in reference to recourse of *queja*, so far as fixing the date is concerned. The hearing shall take place in the manner prescribed for hearing appeals of this character in Article XXII, and the decision shall be rendered within the term prescribed in Article XXIII. Against this decision there shall be no appeal.

XXXIII. The objection to the decision admitting the appeal shall be decided before any other question. If any of the parties may have solicited that documents be furnished under Article XXIX, this question shall be decided after the decision of the objection above referred to. After the decision in this case, measures will be adopted to secure such documents, as provided in the preceding articles. If the same party should object to the admission of the appeal, and at the same time request documents, both requests must be formulated, either in one or in separate papers, but always within the fifteen days provided for in Article XXVII. In this case the decision of one question shall be made, the other waiting until the first shall be decided. In all these cases the costs shall fall upon the party against whom a decision is rendered.

XXXIV. A decision declaring the appeal for annulment of judgment erroneously admitted, or admitted without due grounds, shall be rendered in the following cases:

1. When the appeal may not have been made within the legal period.
2. When the provisions of Article V of this order may not have been complied with.
3. When the conditions specified in Article VII may not obtain.
4. When the identity of the representative of the appellant before the supreme court may not be sufficiently proved, or when the power of attorney presented by him should not be sufficient.
5. When the documents referred to in the first three paragraphs of Article XXVI have not accompanied the records of the case presented to the supreme court, and when the decision mentioned in Article III may not have been officially pronounced by the court, which decision must be rendered for lack of compliance with the provisions therein named.

All other objections to the appeal shall be reserved for the hearing in which shall be finally discussed the questions involved in the case, which questions will be decided in the judgment rendered, which shall be final.

XXXV. The previous question having been decided, or the fifteen days referred to in Article XXVII having passed without this question having arisen, if the transmission to the supreme court of the documents referred to in Article XXIX has not been requested, or shall have been declared unnecessary, or if these documents have been received or requests for them have been approved, the court shall appoint a day for the hearing, when the appeal shall be definitely decided. This day shall be not less than ten nor more than twenty days after the decision admitting the appeal.

XXXVI. The hearing shall take place in the following manner:

The secretary or his deputy shall read, if any of the parties request it, the decision of the lower court, the brief in the case, the documents

which have been requested and brought by order of the court, the part of the proceedings in which the defect in form may have occurred, when the appeal is of this character, and the measures taken to correct them. There shall also be read, if there were such, the *votos particulares* which may have been given by the justices of the audiencia who were not in conformity with the decision of the majority. No requests for the reading of other documents shall be considered.

This reading having ended, the lawyers of the parties to the suit shall speak, the appellant being the first, then those who have agreed to the appeal, then those who opposed it, and finally the fiscal; in cases where the fiscal may have established the appeal, or may have agreed to the same, he shall speak at the time provided for the other parties in the suit as above.

The parties may make corrections, with respect only to facts, the accuracy of which must be established, and opinions which may have been attributed to them, in the course of debate.

With this the president shall declare the hearing of the appeal ended.

XXXVII. The court shall render judgment within a period of ten days. In said judgment the following particulars shall be stated:

1. The place and date in which the judgment was rendered; the court from which the appeal was made; the nature of the suit or cause in which appeal was allowed; the names, professions, and domicile of the parties thereto; the object of the suit and other general circumstances which might be necessary to determine the subject with regard to which appeal was made.

2. Under the word "*resultando*" shall be written literally those of the decision appealed from, except such as are manifestly irrelevant; and there will be added such as may be deemed proper to insert.

3. The directory part of the decision itself.

4. The grounds of annulment advanced by the parties.

5. The name of the *ponente*.

6. The bases in law of the decision rendered under the word "*considerando*."

7. The decision.

Against this decision no appeal can be made, excepting in cases of revision.

XXXVIII. When the supreme court declares that an appeal for error in law or legal doctrine shall be admitted, it shall immediately pronounce the judgment with respect to the question at issue, which should have been rendered by the lower court. This judgment shall be delivered separately, but always within the period of ten days provided for in the preceding articles.

XXXIX. When an appeal is admitted for defect in form, the proceedings shall be returned to the lower court for correction, after which

the case will be concluded conformably to law. This shall be independent of the corrections and remarks which may be made, according to the gravity of the defect found, and which corrections and remarks shall also be included in the decree of the court.

XL. When an appeal for annulment of judgment is declared groundless, the costs of the same shall be paid by the appellant, unless the appellant be the fiscal, or unless the case come under the provisions of Article XLVII.

XLI. In appeals for annulment of judgment for error in law or legal doctrine, the supreme court may, for its better understanding, call for the original records of the case. The order for this may be given at any time before the date on which it must render judgment. Decision must be pronounced within ten days after the receipt of the records so called for.

XLII. Whenever the defendant in a criminal suit makes an appeal for annulment of judgment for error in law or legal doctrine, the decision granting such appeal, and that which is made with reference to the main issue of the case, shall be taken advantage of by other defendants, so far as it is favorable to them, provided the same conditions and alleged grounds of appeal apply to them as to the appellant. Their case shall not be prejudiced by such parts of the decision as may be adverse to the defendant.

XLIII. Whenever, in a criminal suit, appeal may have been made by the defendant, all others who may have been sentenced and who may not have appealed shall be allowed, as part of their terms of imprisonment, if such have been their sentences, all the time during which they may have been imprisoned, from the date on which the appeal was made.

XLIV. Whenever the appellant believes there may have occurred errors in law and defect of form, which justify appeal on both grounds, they must both be duly made in the same petition, in which shall be fulfilled all the requirements of Article V of this order.

XLV. The judge or court pronouncing the judgment shall decide on the admission of one or both of said appeals. If both be admitted, the original proceedings shall be forwarded to the supreme court, which shall consider both appeals jointly and include both in a single judgment. It shall not be necessary in these cases to forward the certificates required in appeals made simply for error in law or legal doctrine.

The same rule shall be observed when one of the parties shall appeal on one ground and the other on another.

XLVI. If the court from which both appeals may have been made, whether by one or more of the parties, shall deny the admission of one of them, the recourse of *queja* made against the denial shall be decided before consideration of the admitted appeal.

XLVII. Whenever the supreme court, on rendering judgment in one of the cases referred to in Articles XLIV and XLV, sustains an appeal for defect in form, it shall abstain from ruling on the appeal for error in law or legal doctrine. Should the appeal for defect in form be declared invalid, judgment shall be rendered on the other. In these cases, the costs shall not be imposed upon the appellant, unless both appeals are declared groundless.

XLVIII. The rights granted to poor and insolvent persons by Articles X and XX of this order shall be understood to belong, not only to him in whose favor a declaration of poverty may have been obtained, but also to the defendant in a criminal case who may not have had property to attach in cases where attachment is provided for. To avail himself of said rights, it shall be necessary that, on making the appeal, the declaration of poverty shall have been made in favor of appellant, even though in *primera instancia* only, or that poverty be proved by the fact that no property was attached, as the defendant possessed none.

XLIX. Whenever the appellant for annulment or in *queja*, referred to in the preceding article, is a prisoner, all the documents therein mentioned shall be transmitted *de oficio*, unless the appellant should expressly request their delivery to him in order to see that they are presented before the supreme court.

L. The person to whom the said documents may have been delivered for the purpose indicated in the preceding article, if he wish the right to enjoy the benefits herein conferred, must in every case present them before the supreme court, asking that counsel be assigned him *de oficio*, or simply designating him in the petition by which the said documents are accompanied. If this should be done within the period set for appearance, it shall be held that the designation was made in due time, and the provisions of the following articles shall be complied with.

In appeals for annulment of judgment for defect in form, in cases wherein the original documents must be forwarded to the supreme court, an insolvent suitor who may have appealed may also appear by writing, in which he designates counsel or requests such designation *de oficio*.

LI. When the supreme court is in possession of the certificates required in the recourse of *queja*, or in cases of appeal for error in law or legal doctrine, or of the original record in cases of appeal for error in form, if the appellant should be insolvent, and have appointed counsel, the latter shall be required to declare whether or not he accepts the charge, unless he should already have done so of his own motion. In case of acceptance the said counsel shall be considered the appellant's representative before the supreme court, and the declaration of acceptance shall be considered equivalent to the written one

referred to in Article XXVI. In appeals for annulment of judgment the procedure shall be as provided for in Article XXVII *et seq.* The appellant's attorney shall receive all the necessary notifications, and all business concerning the case shall be transacted with him.

LII. Whenever an insolvent appellant may have declared before the lower court his intention to appeal in *queja*, the attorney designated, after signifying his acceptance as prescribed in the preceding article, shall be granted three days in which to draw up the petition, according to the provisions of Article XVIII; and thereafter the procedure shall conform to that provided for in Article XIX *et seq.* In this appeal also the attorney shall be the appellant's representative.

LIII. In cases where an insolvent appellant may not have designated an attorney, or the one designated may not have accepted the charge, the court shall designate one *de oficio*, who shall be fully informed as to the records of the case. If the attorney so appointed thinks there is no ground for appeal, he shall so state within three days. If this period pass without his making such statement, it shall be considered that he deems the appeal valid, and the provisions of the preceding articles shall apply.

In recourse in *queja* the appeal must either be established or pronounced to be groundless within the period of three days.

LIV. If the attorney appointed *de oficio* deems the petition groundless, he shall so state in writing, and without argument, and another lawyer shall be designated in the case, with the same duties as the first.

If this second attorney concurs in the opinion of the first, the fiscal shall be required to give an opinion of the case within the period of three days. If he finds that there is ground for appeal, he shall be considered as the appellant's representative, and shall be vested with the corresponding rights and duties.

LV. Whenever the fiscal may have appeared in opposition to an appeal, the requirement of the preceding article shall not be necessary. In this case, as well as in those which he may declare groundless, the court shall refuse to admit the appeal and shall confirm the judgment of the lower court, and shall also direct that the said court be notified of the decision, and that the records be returned thereto.

LVI. Whenever the fiscal may have appealed on the same grounds as an insolvent party, if the two attorneys first appointed *de oficio* should declare that no ground for the appeal exists, the fiscal shall be considered without further process, as the appellant's representative.

Whenever the fiscal may have petitioned for appeal on grounds other than those of the appellant, he shall conform to the requirements of Article LIV.

LVII. Petitions for annulment of awards made by arbitrators shall be made before the supreme court. The fiscal shall have no intervention in such cases.

LVIII. The periods within which said petitions may be made shall be those specified in the last paragraph of Article VII of this order, according to the place where the arbitrators may have made their award, and shall date from the day of the notification of same. The petition shall be accompanied by:

1. A certified copy of the agreement.

2. A certified copy of the award, and the notification of same to the appellant.

If the period of time indicated in the agreement should have been extended, and the appeal rest upon the fact that the decision was not rendered within the specified time, a certified copy of the order authorizing the extension shall likewise be included.

No other document shall be admitted.

LIX. The petition referred to in the preceding article shall state the grounds upon which the appeal is based, from those enumerated in No. 3 of article 1689 of the Law of Civil Procedure, and the reasons for the petition for annulment shall be set forth in separate and numbered paragraphs.

LX. Upon the making of the appeal within the period of time mentioned in Article LVIII, the supreme court shall direct that the other parties be summoned to appear before it, in the exercise of their rights, within the same period of ten or twenty days granted to the appellant. At the expiration of this time the court without further formalities shall set the date for the hearing. The latter shall take place not sooner than ten days nor later than twenty days from the date of the court's order.

LXI. The other parties may present themselves at any time before the commencement of the hearing. Should they appear, they may attend the hearing, which shall proceed according to the provisions of Article XXII of this order.

LXII. The supreme court shall render judgment within five days after the hearing. If the petition be denied, the appellant shall pay the costs.

LXIII. Whenever the supreme court finds that the arbitrators have not made their award within the time specified in the agreement, it shall annul their decision, and the parties opposing the appeal shall pay the costs.

LXIV. If the appeal is based upon the ground that the arbitrators have decided questions not submitted to their judgment, the award shall be annulled in such part or parts only as may be effected by said questions, and the parties responsible for decision on such extraneous issues shall pay the costs.

LXV. Petitions for annulment of any sentence, involving the death penalty, except that of the supreme court, shall be considered as made and admitted in favor of the person so sentenced.

LXVI. A lower court which may have passed sentence of death shall forward the original proceedings to the supreme court at the expiration of the period for making appeal, although none of the parties may have petitioned therefor.

LXVII. If within five days after receiving the case in the Supreme Court the attorney appointed by the prisoner should appear and request a hearing in order to appeal the case, he shall be admitted as party thereto. If no such attorney should appear within said period, the court shall appoint one *de oficio*.

LXVIII. On the admission of the prisoner's attorney, or the latter's appointment *de oficio* by the court, the said attorney duly representing and defending the accused, the court shall grant all the parties, including the fiscal, a period of fifteen days, to show cause, in writing, why annulment of judgment should be made, whether for defect in form or error in law. The reasons set forth shall be in separate and numbered paragraphs, and shall include all the circumstances which should be stated in a petition for appeal. If this petition should have already been made before the lower court, the reasons adduced may be amplified, or the appellant may confine himself to those already stated before the said court.

LXIX. The hearing shall be had within the period specified in article XXXV of this order, when the documents mentioned therein have been presented, or, if they be not presented, it shall be had after the said period has elapsed. In the subsequent proceedings the provisions of article XXXVI *et seq.* on appeals in general shall apply.

LXX. The court may annul the sentence in such cases for defect in form or for error in law, even when the right to appeal has been deemed groundless, by the fiscal or the other parties to the suit.

LXXI. In cases wherein the court may not have passed the sentence of death demanded by the accusers, the proceedings for appeal shall be as provided for in the preceding articles.

LXXII. Whenever the supreme court declares that a sentence involving the death penalty can not for any reason be annulled, it shall cause the records of the case to be sent to the fiscal in order that he may state whether he believes there is, in equity, any reason for the nonexecution of the sentence and for commutation of the penalty by way of grace. Upon the fiscal's opinion, and its own, relative to the case, the court shall propose to the government such decision as it may deem advisable. For this purpose the records shall be transmitted to the secretary of justice.

LXXIII. Any party who may have made appeal for annulment of judgment may abandon it at any stage of the proceedings. If such party should appear in person, he shall be required, in the presence of the court, to ratify the document by which he renounces the case. If he be represented by any other person, the said document must also

be ratified by the same party, unless a special power of attorney for such action be presented to the supreme court.

Whenever such ratification is made, or power of attorney presented, the court shall consider the appeal withdrawn and the appellant shall pay the costs. The judgment shall be declared final and the lower court shall be informed thereof. All records shall be returned to said court, provided there be no other party making the appeal. Only the cases mentioned in preceding articles, revoking sentence of death, shall be excepted.

LXXIV. Whenever two or more similar appeals are made against the same judgment, they shall be combined and shall be decided in a single judgment.

LXXV. Parties to the suit, not appellants, may appear before the supreme court at any period of the trial, and all subsequent proceedings shall be communicated to them, without reverting to foregoing proceedings.

LXXVI. In all appeals made for annulment of judgment imposing imprisonment, it shall be the duty of the fiscal to be present at the hearing, although he may not be the appellant. In other cases he may be present or not, as he shall deem proper. The same will also be understood with regard to civil suits.

LXXVII. Parties to suits shall not pay fees of any kind for any rulings before the supreme court in the office of the clerk of the said court. The costs imposed in these appeals shall include only the fees of the lawyers who represent and defend the parties. In case of objection the amount of said fees shall be regulated by the court in the ordinary manner. If any of the parties shall have been represented before the court by anyone else but his lawyer, the compensation of the said persons shall not be included in the amount of the costs imposed.

LXXVIII. In all decisions rendered by the supreme court in case of appeal, except those mentioned in the following paragraphs, there shall be required for confirmation of judgments appealed from a majority vote of the associate justices present, whatever may be their number. To set aside such judgments, and to annul them, the concurring vote of at least four associate justices shall be required.

Four concurring votes shall be sufficient to impose a sentence of imprisonment for life, confirming in so doing a judgment appealed from, but at least five votes shall be required to impose such penalty by virtue of the annulment of a judgment that may not have imposed it.

Four concurring votes shall be sufficient to confirm a death sentence, provided the fiscal should agree to it; and if not, five votes shall be required. Six votes shall be necessary to impose a death sentence in

cases wherein the lower court may not have pronounced such sentence, whenever the fiscal is in favor of its imposition; if not, the unanimous vote of the seven justices constituting the court shall be necessary.

LXXIX. Whenever in civil or criminal cases involving neither the death penalty nor imprisonment, the hearing may have been had before less than seven justices, and the majorities provided for in the preceding article have not appeared, a new hearing shall be had before the court, with seven members present.

If the necessary majority should not appear in the new hearing, the provisions of article 357 of the Law of Civil Procedure shall be followed in civil cases, and those of articles 163 and 164 of the Law of Criminal Procedure shall be followed in criminal cases in the settlement of disputed questions. Article 165 of the Law of Criminal Procedure is hereby revoked.

LXXX. Whenever, in cases involving capital punishment or imprisonment, the necessary majority of votes should not have been cast, although a majority of the associate justices present at the trial may have voted for said punishments, the penalties immediately inferior in degree to those voted for shall be imposed. This fact shall be thus stated in the sentence.

LXXXI. Whenever the supreme court renders judgment, a certified copy of the same shall be transmitted, together with the brief and original records of the case, to the lower court from which the appeal for annulment proceeds.

Whenever judgment for payment of the costs of an appeal is rendered, said costs shall first be fixed and approved by the supreme court itself in the prescribed form. A certified copy of the amount of costs and of their approval shall be transmitted to the lower court from which the appeal proceeds.

LXXXII. All judgments rendered by the supreme court shall be published in the Official Gazette of the government, and collectively in volumes, the editing of which shall be under the care of the secretary of justice. The court shall have authority freely to suppress in said publication, for whatever reasons it may deem proper, the names of the parties and places mentioned in the suit, that of the court from which the judgment in question proceeds, and any circumstances that may lead to identification of the said parties, places, or court.

LXXXIII. The provisions of articles 800 to 803, both inclusive, of the Law of Criminal Procedure shall continue in force. The references made in article 801 shall be considered as being in relation to the provisions of this order; the words "*y determinar sobre la inversión del depósito*," in article 803, are hereby suppressed.

LXXXIV. Recourse of revision may be had in civil as well as

criminal suits in the cases provided for in articles 1794 and 1795 of the Law of Civil Procedure, and article 954 of the Law of Criminal Procedure, the provisions of which shall continue in force.

LXXXV. Recourse of revision in civil suits may be established by parties to the suit or their assigns; in a criminal suit this may be done by the defendant himself, his consort, his relatives in direct line of descent, his brothers, or by the fiscal whenever he may have cognizance of any case in which such action is proper.

Such prisoners and persons related to them as are mentioned above may request that recourse of revision be had, and to that end may present a simple memorial to the secretary of justice. After examination of the case the secretary may direct the fiscal to establish the appeal.

LXXXVI. In criminal suits revision may be requested at any time, even after the sentence has been executed.

In civil suits, in cases provided for in article 1794 of the Law of Civil Procedure, the period set for establishing such appeals shall be three months, counting from the day upon which new evidence, or fraud, was discovered, or from the date of acknowledgment or declaration of deceit.

Recourse of revision in civil suits shall not be established later than five years after the date of the publication of the judgment in the case. If presented after said period it shall be denied.

LXXXVII. Recourse of revision shall always be established before the supreme court, whatever may be the grade of the judge or court before which the final judgment was rendered.

LXXXVIII. The recourse shall be petitioned for in writing, and the petition shall set forth the facts and legal principles upon which the appeal is based.

LXXXIX. The appeal being established, the court shall require that it be furnished with all the original records and preliminary facts connected with the suit or cause in which the judgment was rendered and the revision of which is solicited, and it shall summon all the parties thereto, or their assigns, to appear, in writing, within forty days to maintain their rights. Thenceforth the proceedings shall be in accordance with the provisions of the Law of Civil Procedure.

XC. The fiscal shall always be considered as party in all appeals for revision.

XCI. Petitions for revision in civil suits shall not interrupt the execution of the final judgments rendered in the case.

In view of the circumstances, however, the court may, at the appellant's request, on giving his bond, and upon the fiscal's recommendation, direct that the execution of the sentence be suspended.

The court shall approve the bond on its own responsibility. To this end it shall establish the kind and amount of said bond, which shall cover the value in litigation, together with the costs and damages con-

sequent upon the nonexecution of the judgment in case the appeal should be denied.

XCII. If questions arise during any part of the proceedings in appeal for revision in a civil suit, the decision of which may come within the criminal jurisdiction, the proceedings before the court shall be suspended until final judgment be rendered in the criminal case. Under such circumstances the period of five years fixed by Article LXXXVI of this order shall be considered as interrupted from the time of initiating the criminal proceedings until their settlement by final sentence, and shall begin again to count from the date of such sentence.

XCIII. In the first case of article 954 of the Law of Criminal Procedure, the supreme court shall declare the contradictory character of the sentences, if in fact it exist, and shall set aside both, ordering the court having cognizance of the crime to institute new proceedings.

In the second case of the same article, whenever the person be identified for whose death a penalty may have been imposed, the supreme court shall annul the final sentence.

In the third case of said article, the court considering the writ declaring the falsity of the document shall annul the sentence and direct the court having cognizance of the crime to institute new proceedings.

XCIV. Whenever in consequence of the annulment of a final judgment the person condemned may have suffered punishment, this shall be considered, if in the new sentence any other punishment is imposed, together with the entire time he served under the first sentence.

XCV. Should the prisoner have died, his widow, his relatives in the direct line of descent, either legitimate or legitimized, may solicit a revision for any of the causes enumerated in article 954 of the Law of Criminal Procedure, in order to rehabilitate the name of the deceased and to secure the punishment of the real culprit.

XCVI. Should the supreme court find grounds for the revision solicited in a civil suit, for the reason that the judgment may have been based upon witnesses or documents declared false, or that it was unjustly rendered in the other cases, under article 1794 of the Law of Civil Procedure, it shall so declare, and rescind, wholly or in part, the final judgment objected to, according to whether the grounds of the appeal refer to the whole judgment or simply to any one of its parts.

XCVII. The supreme court, having rendered judgment in a civil suit, which through the admission of the recourse of revision rescinds, wholly or in part, the final one objected to, shall direct that a certified copy of said judgment be transmitted, together with the records and other data, to the court from which they proceed, in order that the parties may exercise their rights in the corresponding suit.

In any case, the declarations in the recourse of revision shall serve as a basis of the new suit. They may not be discussed.

XCVIII. The rescission of the final judgment in a civil suit, as a result of the recourse of revision, shall, when admitted, produce all its legal effects, except the acquired rights, which must be respected in accordance with the provisions of article 84 of the Mortgage Law.

XCIX. All provisions for annulment of judgment, referring to the appearance of the parties and their representatives before the supreme court, shall apply to the recourse of revision, as well as the costs to be fixed and the nonpayment of fees in the clerk's office.

Whenever the recourse of revision is denied the appellant shall pay the entire costs of same. In case of its admission the objecting party shall never be expressly charged with the costs. This charge shall never be imposed upon the fiscal.

C. There shall be no appeal from the final judgment rendered in recourse of revision.

CI. All the provisions of Titles XXI and XXII of Book II of the Law of Civil Procedure and of Book V of the Law of Criminal Procedure which are not declared in force by the present order are hereby revoked.

CII. The provisions of paragraph 18 of Article VII of the order published April 14, 1899, by the military governor of this island, shall be understood in the manner specified in the following articles.

CIII. Against all judgments of the civil court of the audiencia of Havana, the only one which, in Cuba, under the order of April 1, 1899, shall have cognizance of administrative suits (*contencioso-administrativos*), appeals for annulment of judgment may be established before the supreme court, provided the said judgments be final or of such a character as to put an end to said administrative proceedings, by preventing their continuation.

CIV. Appeals may be established for error in law or legal doctrine and for defects in form in the cases mentioned in articles 1690 and 1691 of the Law of Civil Procedure. All the provisions of the foregoing articles regulating the procedure for annulment of judgment in civil or criminal suits are applicable to administrative suits, as a consequence of the foregoing.

CV. Recourse of revision may also be had against final judgments in administrative suits, whether rendered by the civil court of the audiencia of Havana or by the supreme court, in any of the cases provided for in article 1794 of the Law of Civil Procedure, and all the provisions contained herein, with respect to revision and which may be applicable to civil suits, shall also apply to administrative suits.

CVI. As a consequence of foregoing provisions, articles 64 to 82, both inclusive, of the Law on Administrative Suits (*Ley de lo Contencioso-administrativo*) of September 13, 1888, and articles 449 to 500, both inclusive, of the regulations for the execution of said law are hereby revoked, as well as any other provision of either that may be

in conflict with the provisions of this order. Article 103 of the aforesaid law is likewise revoked, and consequently the fiscal may not raise the question of jurisdiction, except as provided for in article 46 of the said law.

CVII. All the dispositions of the Mortgage Law and its regulations relative to the participation of the "*sección de los registros de la propiedad y notariado*" in administrative appeals, made against the approval of the *registros*, shall apply to the president of the supreme court, to whom, by express provision of the order creating said court, belongs the final decision of such appeals.

CVIII. In all cases of decisions susceptible of appeal for annulment of judgment which may have been pronounced by the audiencias of Havana, Pinar del Río, Matanzas, and Santa Clara, and against which appeal may have been made for annulment of judgment for defect of form, or where the intention of appealing for error of law has been announced, without the parties having been notified prior to the 11th day of April, 1899, the date of the exchange of the ratifications of the Treaty of Paris, the parties shall be notified, and from this notification they may make said appeals in the terms, form, and conditions provided for in this order.

CIX. In cases wherein the audiencias of Santiago de Cuba and Puerto Príncipe, which after the Spanish evacuation were constituted as supreme courts in said provinces, may have given decisions which, in conformity with the Laws of Procedure, were susceptible of appeal for annulment of judgment, and against which there may have been made appeal for defect of form, or where intention of appealing for error in law has been announced, the following rules shall be applied:

1. The provisions of the preceding article shall apply if the judgments have not already been executed.

2. If such judgment shall have been executed, there shall be no other recourse than that of revision. Sentences which may have been given in criminal cases shall be susceptible of revision in the terms expressed by the preceding article, although the prisoners may be undergoing punishment, so long as the punishment ordered is not completely executed.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 96.

HEADQUARTERS DIVISION OF CUBA,
Habana, June 29, 1899.

The military governor of Cuba directs the publication of the following order:

I. Hereafter, in administrative proceedings (*contencioso administrativo*), no other recourse shall be granted against rulings, decrees, or

judgments pronounced by the *sala de lo civil* of the audiencia of Havana and of the supreme court, than that specified in the following articles:

II. Against rulings of mere routine, no recourse whatever shall be had except that of responsibility.

III. Against judgments or rulings deciding incidents of procedings, and, in general, against decrees, the recourse of "*súplica*" may be had under the conditions prescribed in article 401 of the Law of Civil Procedure.

IV. Against final judgments, or against decrees which put an end to administrative proceedings, making their continuation impossible, pronounced by the audiencia of Havana, appeal for annulment of judgment may be had in the cases specified in the order (No. 92) establishing the manner of procedure in such appeals.

V. Against the provisions specified in the preceding article, when pronounced by the supreme court, no other recourse can be had except that of revision.

VI. All decrees, orders, or laws, or parts thereof, in conflict with the provisions of the foregoing order, are hereby revoked.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 114.

HEADQUARTERS DIVISION OF CUBA,
Havana, July 21, 1899.

The military governor of Cuba directs that the order (No. 92) prescribing methods of procedure before the supreme court shall be considered as having gone into effect on the date of its publication in the official gazette.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 135.

HEADQUARTERS DIVISION OF CUBA,
Havana, August 11, 1899.

The military governor of Cuba directs the publication of the following order:

I. From the date of the publication of this order, in every case in which the laws of civil and criminal procedure in force prescribe stated periods of time for appearance before the supreme court, the said periods are hereby reduced to ten (10) days, whenever the audiencias

of Pinar del Rio, Havana, Matanzas, and Santa Clara, or other courts of law within said territories, have cognizance thereof, and to twenty (20) days, when the audiencias or other courts of law of Puerto Principe and Santiago de Cuba are concerned.

II. In every case, when said laws may require that certified copies of proceedings be sent to the supreme court, the original records will be forwarded.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 157.

HEADQUARTERS DIVISION OF CUBA,
Havana, September 5, 1899.

The military governor of Cuba directs the publication of the following order:

In all cases in which the law either of civil or criminal procedure shall reserve the decision in any case to the "court in full" (*tribunal en pleno*), it shall be understood that, from the date of this order, the decision of such case shall be made by the section of the court having cognizance thereof.

If, either because the case pending for decision is that of objections taken to the sitting of any of the magistrates or from any other cause, not a sufficient number of magistrates should be left in the court to constitute a legal quorum to decide the case in question, then, if the case be pending before the audiencia of Havana, magistrates of the other sections shall be called in, and in cases pending before the other audiencias or before the supreme court, the substitute justices shall be called in when necessary to form a legal quorum.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 176.

HEADQUARTERS DIVISION OF CUBA,
Havana, September 21, 1899.

The military governor of Cuba directs the publication of the following order:

Hereafter and for all legal purposes the following only shall be considered as holidays: Sundays, the first day of the year (New Year's Day), Holy Thursday, Good Friday, and the twenty-fifth day of December (Christmas). From the last-mentioned day (Dec. 25th) to the second day of January, tribunals and courts shall suspend business

regarding proceedings which do not refer to misdemeanor suits, summary instructions, cases relating to the release of accused persons, and to civil register.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 42.

HEADQUARTERS DIVISION OF CUBA,
Havana, January 26, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order:

Article 86 of the Civil Code is hereby amended to read as follows:

I. In proceedings instituted for the purpose of celebrating marriages, it is permissible, whenever it may be desired, to substitute the church certificates of birth of the contracting parties and the certificates of the death of their parents and other ancestors by sworn evidence. This evidence may be given before the same municipal judge who is to have cognizance of the proceedings, or any other judge, and shall consist of the sworn statements of two (2) witnesses as to the age, place of birth or death, and nativity of the person to whom it refers.

Whenever the birth or death may have occurred outside of the island of Cuba evidence may be also given thereof in the manner prescribed above.

Certificates of the civil register may also be substituted in the cases and manner above prescribed, but only when proof is given that the books of registry in which the inscriptions were or should have been made have either been lost or destroyed or have never existed, by others which shall be furnished by the judge of *primera instancia* and which must be asked for by the municipal judge at the request of the interested party or parties.

II. In the case of foreigners who have resided less than two (2) years in the island of Cuba, no evidence of the publication of the marriage they intend to contract in the territory where they have had their domicile or residence during the last two (2) years will be required: *Provided*, a certificate is furnished by competent authority or other evidence is submitted satisfactory to the municipal judge who is to authorize the marriage, that the requirement for such publication does not exist in that territory.

III. Municipal judges will charge a fee of one (1) dollar, United States currency, for their services in such proceedings, and no more, no matter what may be the extent thereof nor the procedure that they may take, or whether it refers to one or more persons.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 141.

HEADQUARTERS DIVISION OF CUBA,
Havana, April 7, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order:

I. Article 1399 of the Law of Civil Procedure is hereby amended by adding thereto the following:

The preventive embargo must also be decreed whenever a merchant solicits it, when the proceedings are directed against any one that is or may have been a merchant or manufacturer and the debt is the result of mercantile transactions between them and the payment of an amount in cash is claimed.

In this case it will not be necessary to produce any documentary evidence. It will be sufficient for the one soliciting the embargo to swear that the requisites of the account as stated in the preceding paragraph are true, and that the amount claimed is due him and has not been paid.

The embargo will be immediately decreed after the necessary bond is furnished, which bond will not exceed the amount claimed as due, with one-third of the amount added.

These embargoes will only be decreed in case of indebtedness to the claimant personally, and never in the case of credits transferred to a third person.

The articles embargoes will be left on deposit in the possession of the debtor, and any violation of this deposit will constitute the offense of fraud under paragraph 5 of article 559 of the penal code.

II. Article 1400 of the Law of Civil Procedure is amended to read as follows:

Article 1400. In the cases enumerated in paragraphs 2, 3, and 4 of the preceding article, if the person soliciting the embargo should have no known responsibility, the judge will require from him sufficient bond to pay such damages and costs as may accrue.

The bond to which this article and the previous one refer shall be such as the la wauthorizes. Should the judge accept a personal bond, he will be held personally responsible for the same.

ADNA R. CHAFFEE,
Brigadier-General, U. S. Vols., Chief of Staff.

No. 166.

HEADQUARTERS DIVISION OF CUBA,
Havana, April 23, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order:

I. The intervention of solicitors in the courts and tribunals of this island shall cease to be obligatory from the date of the publication of this order. The interested party or parties may appear in person or through representatives; the latter may be a solicitor, the lawyer in charge of the case, or any other person who enjoys civil rights and who can read and write the Spanish language.

II. In civil suits the representative must show a proper power of attorney, in accordance with the provisions of article 3d of the existing Law of Civil Procedure. In criminal actions, whenever it concerns the accused, it will suffice for him to appoint or name said representative in the record of the proceedings. In the latter case, in default of expressed acceptance, the appearance for the accused of the person mentioned will be considered as his acceptance.

III. Said representatives shall be subject to the provisions of articles 5, 6, 9, 194, and 198 of the Law of Civil Procedure, excepting paragraph 5th of the first of said articles. For collection of payment for their work and reimbursement of the expenses they may incur, all representatives of the parties shall enjoy the privileged proceedings granted to solicitors by article 8 of the aforementioned law and article 242 of the Law of Criminal Procedure.

IV. The parties or their representatives shall be notified of all the rulings of the court, decrees, and sentences, in accordance with the provisions of articles 260, 261, 262, 263, and the first paragraph of art. 264 of the Law of Civil Procedure; but the clerk of the court (*actuario*), whose duty it will be to furnish such copies, shall limit the same to the *considerandos* and decisions whenever decrees and sentences are alone concerned.

V. In accordance with the preceding article the parties or their representatives must proceed to the court or tribunal every day (except Sundays and holidays) to be notified of the decisions rendered.

VI. If the party or his representative, whenever the latter is not a solicitor, should fail to appear at the court on the day when the decisions are given out, the clerk of the court shall, on the day following, post a copy of said decisions upon the bulletin of the court, adding thereto the date of the posting and a statement that said notification is made to the parties or their representatives in this manner because of their failure to appear.

VII. The hereinbefore-mentioned copies shall remain posted for the whole period within which any legal appeal may be filed against the decision. After said period the copy shall be added to the proceedings of the case, with the clerk of the court's note thereon stating the day and hour it was removed from the bulletin.

VIII. After one or more notifications, summons, etc., as indicated in Article VI of this order, the clerk of the court shall deliver to the judge or tribunal, upon the very day of drawing them up, a summary

report of the above, stating the matters upon which decisions have been rendered, the character of the latter, the contents of said decisions, and the names of the parties or the representatives who have been notified in the manner prescribed. The judge or court shall verify the correctness of the clerk of the court's report, and certify to same on the document, which will remain in his possession.

IX. Whenever any party or his representative may have appeared at the court and not received the above notifications he shall have the right to obtain, but only in such cases, from the clerk of the court, a brief certificate stating date and hour of said appearance at said court or tribunal and that he was informed of the nonexistence of any decisions whereof he had to be notified.

X. Any doubts connected with the act of the notification in the manner provided for in Article VI shall be decided without further appeal, and excepting however the provisions of the following paragraph, together with the results that may arise from the report mentioned in Article VIII. Any doubts relating to the appearance of the party or his representative upon a certain day at the court or tribunal for the purpose of being notified shall be decided without further appeal, by means of the certificate mentioned in Article IX.

XI. In regard to notifications to persons other than parties to the suit, or to whom by law they must be made personally, the provisions of articles 266, 267, 268, and 269 of the Law of Civil Procedure shall be observed.

XII. The fees of solicitors shall always be paid by the parties employing them in the suit, and shall not be imposed upon parties condemned to pay the costs.

XIII. The amount of the costs shall be fixed by the clerk of the court, free of charge.

XIV. The record of the proceedings, whenever delivery of same is to be made, shall be handed to the solicitor in case of his taking part in the suit, otherwise to the lawyer, in return for a receipt which the clerk of the court shall draw up, stating therein the number of folios contained in said record.

XV. Whenever any one of the parties may have omitted the copy of any petition or document, without detriment to what is provided for in art. 517 of the Law of Civil Procedure, the parties who were to receive said copy may waive their right thereto by making written or verbal statement to that effect to the court.

XVI. From the date of the enforcement of this order, no further solicitors *de oficio* shall be appointed; and whenever the accused may have failed to appoint counsel and a lawyer for paupers (*abogado de pobres*) be appointed for his defense, the former shall be instructed with the proceedings of the case.

XVII. From the date of this order the offices of appraiser of costs

(*tasadores de costas*) and of distributor of civil affairs (*repartidor de negocios civiles*) of the audiencia of Havana shall be abolished.

ADNA R. CHAFFEE,
Brigadier-General, U. S. Vols., Chief of Staff.

No. 192.

HEADQUARTERS DIVISION OF CUBA,
Havana, May 9, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order:

Article LXXI of Order No. 92, Headquarters Division of Cuba, dated June 26, 1899, relating to appeals for annulment of judgment, is hereby modified to read as follows:

LXXI. In cases wherein the court may not have passed the sentence of death demanded by the accusation, the proceedings for appeal shall be as provided for in the preceding articles.

Upon admitting the appeal, the court passing sentence shall order that the original proceedings be forwarded to the supreme court, instead of directing that a certified copy be delivered to the appellant. After said records have been received by the supreme court, and the appellant has appeared, the prisoner shall be required to appoint a lawyer to represent and defend him, which he must do within what remains of the time set for his appearance, and if this be not possible, within ten days, when an appeal is made against judgments of the audiencias of Havana, Matanzas, Santa Clara, and Pinar del Rio, and within twenty days if against decisions of the audiencias of Puerto Principe and Santiago de Cuba, counting from the day following his being required to appoint counsel. If the prisoner appoints an attorney, within the third day after such appointment is recorded in the supreme court, the person selected shall be notified thereof, in order that on the day following the notification he may signify his acceptance or not, and his appearance in the name of the prisoner shall be considered as acceptance. Should the prisoner not designate counsel, or the acceptance of the person appointed be not recorded, the court shall designate one *de officio* (of its own accord) to represent the prisoner and take charge of his defense, who shall not be excused therefrom, except upon grounds of incompatibility. The prisoner having been provided with counsel for his defense, the subsequent proceedings of the appeal will be in conformity with all that may be applicable to the case in the provisions of Article XXVII and following ones. The parties may state within the period specified in Article XXVIII, in addition to the petitions expressed therein, any grounds of appeal for annulment for defect in form.

Before rendering decision concerning the appeal established the court shall examine the defects in form alleged by the parties and shall not render decision upon said appeal, except it find that there are no such defects in form nor any others not alleged by the parties that justify annulment.

If the sentence be annulled and the new sentence impose the death penalty, before communicating this to the lower court the provisions of Article LXXII, hereby declared applicable to this case, shall be complied with.

TRANSITORY PROVISIONS.

Retroactive effect is hereby given to the provisions of this order in the appeals pending at the date of its publication. They will return to the point of the proceedings from where the prisoner may avail himself of the provisions which are here established in his favor.

J. B. HICKEY,
Assistant Adjutant-General.

No. 242.

HEADQUARTERS DIVISION OF CUBA,
Havana, June 18, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order:

I. The second and third paragraphs of article 194 of the Law of Civil Procedure shall henceforth read as follows: "In the absence of the objecting party only the lawyer and the solicitor or the representative of said party shall sign the application, provided that either of the two last-named persons be expressly authorized to demand a change of venue, and said solicitor or representative shall ratify under oath the application made, without which requisite no action shall be taken thereon.

"In every case there shall be stated in the application, in a specific and clear manner, the grounds on which the objection is made, alleging that the latter are true."

II. To article 196 there shall be added the following paragraph: "Every objecting party, should he not be declared insolvent, shall accompany with his application for a change of venue the proper voucher proving that he has deposited at the place destined for the purpose a sum equal to one-half of the amount that he would be obliged to pay as a fine, in case his application be refused. Without this requirement no action shall be taken in relation to said application, although it may contain a specific promise that said deposit will be made later on."

III. The following words shall be added to article 197: "In all these cases the return of the deposit shall be ordered."

IV. Article 212 shall henceforth read as follows: "In addition to being condemned to the payment of the costs specified in the preceding article, a fine of $200 shall be imposed on the objecting party, whenever his application is against a judge of *primera instancia*, and of $400 whenever it is against a president or an associate justice of an audiencia or of the supreme court."

V. Article 213 shall henceforth read as follows: "As soon as a sentence may become final, the deposit made on establishing the application for a change of venue shall cease to be a deposit and become the property of the State, as constituting one-half of the amount of the fine imposed. When the remaining half of the fine mentioned in the preceding article shall not have been paid, the person fined shall undergo imprisonment in lieu thereof, at the rate of one day for each three dollars of the fine not paid, in which respect and for this sole purpose paragraph first of article 49 of the penal code in force is hereby amended, but the imprisonment shall under no circumstances be for a longer period than six months."

Within the first eight days of each month the judges of *primera instancia* shall forward to the presidents of the respective audiencias, and the latter, shortly thereafter, shall forward to the department of justice a detailed statement of the cases wherein applications for change of venue have been refused and fines imposed, and they shall state therein the amounts of the latter and whether the same have been paid, or if in default of said payment, whether the persons fined have undergone the prescribed imprisonment in lieu thereof; the functionary objected to being responsible for the payment of said fines, if through his fault or neglect they have not been paid. In the same manner the presidents of the supreme court and of the audiencias shall forward, within the period hereinbefore stated, to the department of justice a report of the applications for change of venue, prepared in the manner expressed, on which action has been taken by their respective courts; said presidents also incurring the above-mentioned responsibility whenever there may be reasons therefor."

VI. The following words shall be added to article 215: "The change of venue having been finally granted, the return of the deposit shall be ordered."

VII. In articles 216 and 217 the words *ministerio de ultramar* and *ministerio* shall be replaced by the following ones: *Secretaria de justicia* and *secretaria*.

VIII. To article 218 shall be added the paragraph that has been incorporated in article 196.

IX. To the first paragraph of article 219 the following phrase shall be added: "In this case the deposit shall be ordered to be returned."

X. To paragraph first of article 223 the following words shall be added: "and as soon as it may be final, the return of the deposit made shall be ordered."

XI. Article 228 shall henceforth read as follows: "Whenever a change of venue has been denied, the applicant therefor shall be condemned to the payment of the costs of the proceedings and shall also be fined in the sum of $100.00, concerning which the provisions of article 213 are applicable; it being understood that the monthly statements shall be sent by the municipal judges to the judges of *primera instancia* and by the latter to the presidents of the respective audiencias, for transmission to the department of justice."

XII. To paragraph first of article 231 shall be added the words: "and 196, added."

XIII. Article 234 shall be amended to read as follows: "The provisions of articles 194 *et seq.* of section 2nd of this title, together with the changes established, shall extend to applications for change of venue containing objections to clerks and deputy clerks of the supreme court and the audiencias, and to clerks of the court and recorders of judicial proceedings of the courts of *primera instancia*, but with the amendments established in the following articles."

XIV. To paragraph first of article 236 will be added the following words: "In this case the return of the deposit shall be ordered."

XV. To paragraph second of article 245 shall be added the following phrase: "And in a like manner a fine of fifty dollars shall be imposed upon the applicant, and the provisions of article 213 shall be applicable to said fine."

J. B. HICKEY,
Assistant Adjutant-General.

N°. 307.

HEADQUARTERS DIVISION OF CUBA,
Havana, August 8, 1900.

The military governor of Cuba directs the publication of the following order:

I. Hereafter marriages may be civil or religious, at the option of the contracting parties.

II. Marriage, so far as its validity in law is concerned, continues to be a civil contract, to which the consent of the parties, capable in law of making the contract, is essential.

III. Religious marriages, solemnized as herein provided, shall have the same force and effect as civil marriages.

IV. A duly ordained clergyman or minister of any religion may perform the marriage ceremony, provided that the contracting parties

may legally contract marriage, and provided that they solemnly declare, in the presence of the clergyman or minister and of the attending witnesses, that they take each other as husband and wife.

V. Two witnesses of age must be present at the ceremony, and must, together with the officiating clergyman or minister, sign the certificates herein provided for.

VI. Before solemnizing a marriage the clergyman or minister must, unless there has been a previous civil marriage, be furnished with the evidence as to the age of the contracting parties, required by article 86 of the Civil Code, as amended by Order N°. 42 of January 26th, 1900, a certificate signed by the contracting parties that they are free to contract marriage, having no living husband or wife, and the parental permission, or the dispensation, when necessary, under the provisions of the Civil Code now in force.

VII. The clergyman or minister shall at the time of performing the ceremony, if there has been no previous civil marriage, make a certificate showing:

1. The names, surnames, age, color, occupation, domicile, or residence of the contracting parties.

2. The names, surnames, occupation, domicile, or residence of the parents of the contracting parties, or such part of this information as can be ascertained.

3. The date and place of the performance of the ceremony of marriage and the statement that such marriage was performed, in the presence of the subscribing witnesses, by the subscribing clergyman or minister, who shall add the name of his church or parish.

VIII. The certificate prescribed in the foregoing paragraph shall be filed by the officiating clergyman or minister in the office of the civil register of the municipality where the ceremony was performed, together with the evidence and certificates required by Article VI of this order, within 20 days from the date of the marriage, and a proper record shall thereupon be made on the civil register, and a memorandum shall be given the clergyman or minister showing the date of such filing.

IX. Any person other than a duly ordained clergyman or minister, or the proper civil authority, who shall perform or attempt to perform the ceremony of marriage, shall be deemed guilty of a *delito* and punished by imprisonment for not less than one nor more than five years.

X. Any clergyman or minister who, having celebrated a religious marriage as herein provided, where there has been no previous civil marriage, fails to file the certificates, and proofs as provided for by Paragraphs VII and VIII of this order, shall be tried, and, if found guilty, fined $100.00, or imprisoned from 30 to 90 days by the proper judge of his domicile.

XI. Any custodian of a civil register who refuses to receive and file

and record the certificates and evidences as herein provided for, or who refuses in a proper case to give memorandum mentioned in the foregoing paragraph, must state his reasons in writing for such refusal, and may, at the petition of any party interested, be cited before the judge of *instrucción* of the district, who must immediately order, in a proper case, that the record be made and the memorandum given, and the custodian of the civil register will be condemned to pay the costs of the application.

XII. Nothing in this order shall affect or modify the provisions of codes, laws, decrees, or orders concerning the method of performing civil marriage. All provisions of codes, laws, decrees, or orders in conflict with this order are hereby repealed and revoked.

J. B. HICKEY,
Assistant Adjutant-General.

No. 427.

HEADQUARTERS DIVISION OF CUBA,
Havana, October 15, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order relating to the writ of habeas corpus:

WHO MAY PROSECUTE WRIT—WRIT MAY ISSUE ON ANY DAY—PARTIES.

I. A person imprisoned or restrained of his liberty within the island of Cuba for any cause or upon any pretense is entitled, except where he has been committed or is detained by virtue of the judgment of a competent judge or tribunal, to a writ of habeas corpus, as prescribed in this order, for the purpose of inquiring into the cause of the imprisonment or restraint, and, in a case prescribed by law, of delivering him therefrom. A writ of habeas corpus may be issued and served on any day, but it can only be made returnable on a working day.

The parties to a case instituted by the writ of habeas corpus may appear by attorney as in other cases.

HOW AND TO WHOM APPLICATION FOR WRIT SHOULD BE MADE.

II. Application for the writ must be made by a written petition signed either by the person for whose relief it is intended or by some person in his behalf, to any of the following judges or tribunals, or to the chief justices or associate justices thereof:

1. The judges of *instrucción*, in cases arising out of the acts of the municipal and correctional judges within the territorial jurisdiction of said judges of *instrucción*.

2. The *audiencias* and the *sala de lo criminal* of the *audiencia* of Havana, in cases arising out of the acts of the judges of *instrucción* within the territorial jurisdiction of said *audiencias* and said *sala de lo criminal*.

3. The supreme court in cases arising out of the acts of the *audiencias* and the *sala de lo criminal* of the *audiencia* of Havana.

4. The judges of *instrucción*, or the *audiencias* and the *sala de lo criminal* of the *audiencia* of Havana, at the option of the petitioner, in cases arising out of the acts of any civil authority or official, or of any corporation, association, or private individual, by which any person has been restrained of his liberty.

When an *audiencia* or the *sala de lo criminal* of the *audiencia* of Havana or the supreme court has jurisdiction the petition may be presented to its chief justice or any of its associate justices.

CONTENTS OF PETITION.

III. The petition must be sworn to by the petitioner, who shall be thus identified before a notary public or the judge or a member of the tribunal to which the application is made, without cost to such petitioner, and must state in substance:

1. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty; the place of imprisonment or restraint, and the name or description of the officer or person by whom he is imprisoned or restrained.

2. That he has not been committed and is not detained by virtue of any judgment of a judge or tribunal.

3. The cause or pretense of the imprisonment or restraint according to the best knowledge and belief of the petitioner.

4. If the imprisonment or restraint is by virtue of a mandate a copy thereof must be annexed to the petition, unless the petitioner avers either that by reason of the removal or concealment of the person imprisoned or restrained before the application a demand of such a copy could not be made, or that such a demand was made and the copy was refused.

5. If the imprisonment or restraint is alleged to be illegal, the petitioner must state in what the alleged illegality consists.

If the petitioner should not have knowledge of the facts referred to in Paragraph III, he must so state.

WHEN WRIT MUST BE GRANTED—PENALTY FOR REFUSING.

IV. A judge or tribunal authorized to grant the writ must grant it without delay whenever a petition therefor is presented, as prescribed in this order, unless it appears from the petition itself or the annexed documents that the petitioner is not entitled by law to prosecute the writ. For a violation of this paragraph, a judge, or if the

application was made to a tribunal, each member of the tribunal who assents to the violation, shall be jointly and severally responsible to the person imprisoned or restrained in the sum of one hundred dollars, to be recovered by an action in his name.

FORM OF WRIT.

V. The writ issued as prescribed in this order must be substantially in the following form, the blanks being properly filled up:

The People of the Island of Cuba, to ———:

We command you that you have the body of ———, by you imprisoned or restrained of his liberty, as it is said, together with the time and cause of such imprisonment or restraint, by whatsoever name the said ——— is called or charged, before ——— (here insert the name of judge or tribunal) at ——— immediately after the receipt of this writ, to carry out the order of the judge or tribunal then and there to be made, and bring with you this writ.

Signed the —— day of ———, in the year 19—.

WHEN WRIT SUFFICIENT.

VI. The writ shall not be disobeyed for any defect of form, and particularly in either of the following cases:

1. If the person having the custody of the person imprisoned or restrained is designated, either by his name of office, if he has one, or by his own name; or if both names are unknown or uncertain, by an assumed appellation. Any person upon whom the writ is served is deemed to be the person to whom it is directed, although it is directed to him by a wrong name or description, or to another person, provided that the person imprisoned or restrained of his liberty is in his custody.

2. If the person directed to be produced is designated by name or otherwise described in any way, so as to be known to be the person intended.

WHEN WRIT TO ISSUE WITHOUT APPLICATION.

VII. Where a judge or a member of a tribunal authorized by this order to grant writs of habeas corpus has evidence that any person is illegally imprisoned or restrained of his liberty, within his jurisdiction, he must issue a writ of habeas corpus for the relief of that person, although no application therefor has been made.

RETURN—ITS CONTENTS.

VIII. The person upon whom the writ has been duly served must state plainly and unequivocally in his return:

1. Whether or not he has, or at any time whatsoever had, in his custody or under his power or restraint, the person for whose relief the writ was issued.

2. If he so had that person when the writ was served and still has him, he must state fully the authority and true cause of the imprisonment or restraint. If the person is detained by virtue of a mandate, a copy thereof must be annexed to the return, and upon the return of the writ the original must be produced and exhibited to the judge or tribunal.

3. If he so had the person imprisoned or restrained at any time, but has transferred the custody or restraint of him to another, the return must conform to the return required by the second subdivision of this paragraph, except that the substance of the mandate may be given, if the original is no longer in his possession; and that the return must state particularly to whom, at what time, for what cause, and by what authority the transfer was made.

The return must be signed by the person making it, and must be sworn to by him in like manner as the petition must be sworn to, and without cost.

TIME OF RETURNING WRIT.

IX. Where the writ is returnable at a place within thirty kilometers of the place of service, the return must be made and the person imprisoned or restrained must be produced within twenty-four hours after service, and the like time must be allowed for each additional thirty kilometers.

BODY OF PERSON IMPRISONED OR RESTRAINED TO BE PRODUCED.

X. The person upon whom a writ has been duly served must also bring up the body of the person imprisoned or restrained in his custody, according to the command of the writ, unless he produces with the return a certificate of a physician, sworn to before a notary public or a judge, or a member of a tribunal, without cost, that the person imprisoned or restrained is so sick that the production of him would endanger his life or his health, but in such case the judge or tribunal may appoint a physician to make an examination and report, and may order the immediate production of the person imprisoned or restrained.

PROCEEDINGS ON DISOBEDIENCE OF WRIT.

XI. Where a person who has been duly served with the writ refuses or neglects without sufficient cause shown by him fully to obey it, the judge or tribunal before whom or which it is made returnable, upon proof of proper service thereof, must immediately issue a warrant of arrest, directed generally to any police officer of the island, commanding such officer immediately to apprehend the delinquent and bring him before the judge or tribunal. Upon the delinquent being so brought an order must be made committing him to jail. The order must direct that he stand committed until he makes return to and obeys the writ.

ORDER TO PRODUCE PERSON IMPRISONED OR RESTRAINED.

XII. The judge or tribunal may also, in his or its discretion, at the time when the warrant of arrest is issued or afterwards, issue an order to the police officer to whom the warrant is directed, commanding him immediately to bring before the judge or tribunal the person for whose benefit the writ was granted, who must thereafter remain in the custody of the officer executing the order until discharged, admitted to bail, or remanded, as the judge or tribunal may direct.

PROCEEDINGS ON RETURN OF WRIT.

XIII. The judge or tribunal before whom or which the person imprisoned or restrained is brought by virtue of the writ issued as prescribed in this order must immediately after the return of the writ hear the evidence, examine into the facts alleged in the return and into the cause of the imprisonment or restraint of the person imprisoned or restrained, and must make an order to discharge him therefrom if no legal cause for the imprisonment or restraint or for the continuation thereof is shown.

WHEN PERSON IMPRISONED OR RESTRAINED TO BE REMANDED.

XIV. The judge or tribunal must immediately make an order to remand the person imprisoned or restrained, if it appears that he is detained in custody by virtue of the judgment of a competent judge or tribunal, and that the time for which he may legally be so detained has not expired.

PROCEEDINGS ON IRREGULAR COMMITMENT.

XV. If it appears that the person imprisoned or restrained has been legally committed for a criminal offense, or if he appears by the testimony offered with the return, or upon the hearing thereof, to be guilty of such an offense, although the commitment is irregular, the judge or tribunal, before whom or which he is brought, must immediately make an order to discharge him upon his giving bail, if the case is bailable, or if it is not bailable to remand him.

BAIL—WHEN AND HOW ORDERED.

XVI. If upon the return to a writ issued as prescribed in this order it appears that the person imprisoned or detained is entitled to be bailed, the judge or tribunal must make an order fixing the sum in which he is to be admitted to bail, and directing his discharge upon bail being given accordingly, as required by law. If sufficient bail is immediately offered, the judge or tribunal must take it; otherwise bail may be given afterwards to the judge or tribunal who or which originally committed the person imprisoned or restrained.

WHEN PERSON IMPRISONED OR RESTRAINED MAY BE COMMITTED TO ANOTHER OFFICER.

XVII. Where a person imprisoned or restrained is not entitled to his discharge and is not bailed, he must be remanded to the custody or placed under the restraint from which he was taken, unless the person in whose custody or under whose restraint he was, is not legally entitled thereto; in which case the order remanding him must commit him to the custody of the officer or person so entitled.

CUSTODY OF PERSON IMPRISONED OR RESTRAINED PENDING PROCEEDINGS.

XVIII. Pending the proceedings on habeas corpus the judge or tribunal before whom or which the person imprisoned or restrained is brought may either commit him to the custody of the keeper of the jail where the proceedings are pending, or place him in such care or custody as his age and other circumstances require.

NOTICE TO BE GIVEN BEFORE DISCHARGING PERSON IMPRISONED OR RESTRAINED.

XIX. Where it appears from the return that the person imprisoned or restrained is in custody by virtue of a mandate, notice of the hearing must be given to the representative of the fiscal of the tribunal in which the case is pending.

PERSON IMPRISONED OR RESTRAINED MAY CONTROVERT RETURN.

XX. A person imprisoned or restrained, produced upon the return of a writ, may give testimony, under oath, showing either that his imprisonment or detention is illegal or that he is entitled to his discharge. The judge or tribunal must then proceed in a summary way to hear the evidence produced in support of or against the imprisonment or detention, and to dispose of the person imprisoned or restrained, as the justice of the case requires. In the course of such hearing the judge or tribunal may examine the person imprisoned or restrained, and any other witnesses whom in his or its judgment it may be desirable to hear; and for this purpose an adjournment may be taken, not exceeding three days, except on the petition of the person imprisoned or restrained.

PROCEEDINGS ON SICKNESS OF PERSON IMPRISONED OR RESTRAINED.

XXI. In case of the sickness referred to in paragraph X of this order, if the return be in the proper form, and if the judge or tribunal accepts the truthfulness of the physician's certificate, the application shall be decided as if the person imprisoned or restrained were

present; but the representative of such person shall be heard in his behalf without the necessity of any express power being granted.

OBEDIENCE TO ORDER TO DISCHARGE: HOW ENFORCED.

XXII. Obedience to an order to discharge a person imprisoned or restrained may be enforced by the tribunal which or the judge who made the same, by warrant of arrest, with like effect as in case of a neglect to make a return to a writ of habeas corpus. A person guilty of such disobedience shall forfeit to the person imprisoned or restrained one hundred dollars, to be recovered by an action in his name.

WHEN DISCHARGE A BAR TO REIMPRISONMENT.

XXIII. A person imprisoned or restrained who has been discharged by an order made upon a writ of habeas corpus shall not be again imprisoned, restrained, or kept in custody for the same cause. But it is not deemed to be the same cause in either of the following cases:

1. Where he has been discharged from a commitment on a criminal charge, and is afterwards committed for the same offense by the legal mandate or other order of the tribunal wherein he was required by bail bond to appear, or in which he has been convicted for the same offense.

2. Where he has been discharged in a criminal case for defect of proof, or for defect in the commitment, and is afterwards arrested on sufficient proof and committed by a legal mandate for the same offense.

VIOLATION OF LAST PARAGRAPH.

XXIV. If a member of a tribunal or judge or any other person in any manner knowingly violates, causes to be violated, or assists in the violation of the last paragraph, he, or if the act or omission was that of a tribunal, each member of the tribunal assenting thereto, shall be jointly and severally liable to the person imprisoned or restrained in the sum of one hundred dollars, to be recovered by an action in his name.

TRANSFER OR CONCEALMENT OF PERSON IMPRISONED OR RESTRAINED TO ELUDE WRIT.

XXV. Any one having in his custody or under his power a person entitled to a writ of habeas corpus, or a person for whose relief a writ has been duly issued, who, with intent to elude the service of the writ or to avoid the effect thereof, transfers the person imprisoned or restrained to the custody, or places him under the power of another, or conceals him, or changes the place of his confinement, shall be criminally responsible for the offense committed in addition to the

pecuniary liability provided for on the preceding paragraph, and a person who knowingly assists therein shall be equally liable.

ORDER WHEN PERSON RESTRAINED ABOUT TO BE CARRIED OUT OF ISLAND.

XXVI. Where it appears by proofs satisfactory to a member of a tribunal or judge authorized to grant the writ that a person is held in illegal confinement or custody, and that there is good reason to believe that he will be carried out of the island, the member of the tribunal or judge must immediately make an order to prevent it, directed to any officer or person, and commanding him to take and immediately bring before the tribunal or judge the person restrained, to be dealt with according to law.

In this case, if the person who deprived the other of his liberty be present, he will be notified of the order made, which will have all the effects of a writ of habeas corpus so far as he is concerned, and he shall immediately make return.

ARREST OF THE PERSON DETAINING THE PERSON RESTRAINED.

XXVII. Where the facts mentioned in the last paragraph are also sufficient to justify an arrest of the person having the person restrained in his custody, as for a criminal offense committed in taking or detaining him, the order must also contain a direction to arrest that person for the offense, bringing the person arrested before the proper judge or tribunal.

PROCEEDING WHERE A WRIT IS REFUSED BY JUDGE OF INSTRUCCIÓN.

XXVIII. In cases where judges of *instrucción* have jurisdiction to grant writs of habeas corpus and refuse to do so, the petitioner may apply to the chief justice or any associate justice of the *audiencia* of the district, or, in a proper case, to the *sala de lo criminal* of the *audiencia* of Havana, setting forth, on oath, the fact of the refusal of the judge of *instrucción*.

WHEN SUBSEQUENT WRIT MAY ISSUE.

XXIX. But one petition for habeas corpus can be made for the same imprisonment or deprivation of liberty, unless new facts are alleged which destroy the reasons which justified the former decision; which new facts must be stated, on oath, in the petition, and their sufficiency will be judged by the judge or associate justice to whom it is issued. The person on whom a writ is served shall state in his return whether a previous writ has been issued for the same imprisonment or restraint, and if there has been a previous writ, the judge or tribunal shall summarily dismiss the application, except in the cases herein provided for.

PENALTY FOR REFUSING COPY OF PROCESS.

XXX. Any person who detains anyone by virtue of any written authority must deliver a copy thereof to the person arrested or restrained, or to any person who applies therefor for the purpose of obtaining a writ of habeas corpus in behalf of the person imprisoned or restrained. If he refuses to do so, he forfeits one hundred dollars to the person imprisoned or restrained, to be recovered by an action in his name.

REPEALING PARAGRAPH.

XXXI. All laws, orders, decrees, or parts thereof, existing in the island of Cuba which conflict with the provisions of this order are hereby repealed.

WHEN THIS ORDER TAKES EFFECT.

XXXII. The provisions of this order shall go into effect December 1, 1900.

J. B. HICKEY,
Assistant Adjutant-General.

No. 438.

HEADQUARTERS DIVISION OF CUBA,
Havana, October 21, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order:

I. The required preparation of the "*apuntamiento*," established by the Law of Civil Procedure in the proceedings in matters of appeal of which the audiencias have cognizance, which matters shall be proceeded with in conformity with the other requirements provided for by said law, is hereby revoked and abolished.

II. In lieu of the "*apuntamiento*," which is abolished by this order, there shall always be sent to the supreme court the original judicial records of proceedings in matters of appeal.

III. The provisions of this order are applicable to lawsuits pending at the present time before the audiencias.

IV. All rulings antagonistic to those contained in this order are hereby abolished.

J. B. HICKEY,
Assistant Adjutant-General.

APPENDIX II.

CHANGES IN AND AMENDMENTS TO THE CIVIL PROCEDURE OF THE ISLAND OF PORTO RICO MADE BY THE MILITARY GOVERNMENT DURING THE YEARS 1898, 1899, AND 1900.

GENERAL ORDERS, No. 19.

HEADQUARTERS DEPARTMENT OF PORTO RICO,
San Juan, December 2, 1898.

I. The full bench of the supreme court of justice, consisting of seven magistrates, including the president, shall hear all the appeals pending decision, as well as those that may hereafter be established and are authorized by the laws of civil and criminal procedure, which, under the Spanish régime, devolved upon the supreme court of Madrid, whose jurisdiction regarding this island ceased by virtue of the peace protocol.

II. In cases of incompatibility, vacancy, or absence, the incumbent magistrates shall be substituted by the assistant or vice-magistrate, and in default of these, by the primary court judges of the capital.

III. Causes where the death penalty has been demanded will be heard and decided by a bench composed of three full magistrates and two assistant magistrates, and in default of these, by the primary court judges of the capital, provided there be no incompatibility.

IV. The appeals forwarded to and still pending decision at the aforesaid supreme court of Madrid shall be claimed through diplomatic channels, without detriment to the action taken for that object by the parties concerned; and upon their return shall be transferred to the hearing of the supreme court of justice.

V. The exposition or report referred to in art. 948 of the law of criminal procedure in cases of death penalty shall be addressed to the secretary of justice, in order that he may propose, should he deem it equitable, commutation of the penalty to the military commander, Department of Porto Rico.

VI. In like manner the supreme court of justice shall hear the appeals which, under the late régime, in administrative matters, devolved upon the supreme court established for the purpose at Madrid.

By command of Major-General Brooke:

M. V. SHERIDAN,
Brigadier-General, U. S. V., Chief of Staff.

GENERAL ORDERS, No. 71. } HEADQUARTERS DEPARTMENT OF PORTO RICO, *San Juan, May 31, 1899.*

Upon the recommendation of the secretary of justice, the following is promulgated:

I. Any justice of the supreme court of Porto Rico, or of any audiencia, or any judge of instruction, shall issue the writ of habeas corpus on the petition of any person who is restrained of his liberty within their respective judicial districts. But when such writ so issuing from such court is served upon any person who holds a prisoner subject to United States authority, the body of the prisoner will not be produced, but respectful return will be made setting forth that the prisoner is held under color of the authority of the United States, and that therefore the court issuing the writ is without jurisdiction, and praying that the writ be therefore dismissed.

II. Upon ascertainment by such judge or court issuing the writ that such return is true in fact, the writ shall be dismissed.

III. The secretary of justice will see that this order is duly observed. Instructions, approved by the commanding general, and printed blank forms will be supplied on application to the secretary of justice.

By command of Brigadier-General Davis:

W. P. HALL,
Adjutant-General.

CIRCULAR No. 17. } HEADQUARTERS DEPARTMENT OF PORTO RICO, *San Juan, July 3, 1899.*

Referring to General Orders, No. 71, current series, from these headquarters, the following instructions are published:

1. A writ of habeas corpus—in general terms—is one that is issued for the delivery of a prisoner to the authority issuing same, by the person who has him in custody, for the purpose of ascertaining and deciding without delay whether the prisoner should continue in confinement, have his bail reduced or altered, or be released on his own recognizance.

2. The petition for a writ of habeas corpus must be made by addressing an application in writing to any of the authorities enumerated in paragraph 1 of General Orders, No. 71, current series. In said petition the party concerned shall set forth: What authority or person ordered his arrest; the date thereof; the causes that led to his imprisonment; the place of his confinement; whether he is held without bail, or in case bail has been required, the amount of same; the allegations he may see fit to advance in support of his petition; the evidence he may have to substantiate said allegations; and lastly, a request that

the writ of habeas corpus be issued, and that, after the proper formalities, he be ordered released under his own recognizance, or his bail fixed or reduced.

3. Upon receipt of this petition by the judge or court to whom it is addressed, should he have no jurisdiction over the party concerned, he shall forthwith refer said petition to the nearest authority having such jurisdiction, giving due notice thereof to the petitioner.

4. When the petition has reached the hands of a judicial authority having jurisdiction over the petitioner, he shall immediately issue a writ of habeas corpus, to be served upon the party who has the custody of the petitioner, ordering the prisoner to be brought before him, and the writ returned with a statement thereon as to the causes of the imprisonment, the manner in which it was ordered, and the time the prisoner has been confined.

5. When the prisoner has been brought before the authority issuing the writ of habeas corpus, he shall be examined under oath as to the truth of the statements contained in the petition. He shall then be made cognizant of the report of his custodian, indorsed upon the writ. The evidence offered by him in support of his statements shall be briefly heard or examined in his presence within the term he may demand therefor, should such evidence be necessary for the purpose.

6. On the day following the last one of the term fixed for verification of the evidence the aforesaid authority, after duly weighing the same and taking into account the petitioner's allegations, shall decide thereon, according to law and justice.

7. All persons indicted for an offense the penalty whereof is less than that of corrective confinement shall remain at large. All those indicted for offenses whereof the penalty is greater than that of corrective confinement shall be admitted to bail, in cash or property, in proportion to the gravity of the offense and the injury caused by it, except in cases of murder.

8. When the party requesting a writ of habeas corpus does not reside in the same city or town with the authorities enumerated in paragraph 1 of General Orders, No. 71, current series, said authorities may designate the inferior authority before whom the prisoner should be brought by his custodian, and who is to verify the evidence, an endorsement to that effect being made upon the writ.

9. When by virtue of a writ of habeas corpus the release of a prisoner or the reduction of his bail has been ordered, the judicial authority issuing same shall forward a copy of said decision to the judge or court where the prisoner is being tried in order that it may be joined to the record of the case.

10. The writ of habeas corpus and the decision given by reason thereof shall not affect the final judgment that eventually may be given in the prosecution instituted against the party requesting it.

Its object is only to prevent the undue prolongation of his detention in jail.

11. The writ of habeas corpus shall be issued without cost to the petitioner.

By command of Brigadier-General Davis:

W. P. HALL,
Adjutant-General.

GENERAL ORDERS, No. 88. } HEADQUARTERS DEPARTMENT OF PORTO RICO, *San Juan, June 27, 1899.*

I. In view of existing and steadily increasing legal business requiring judicial determination which does not fall within the jurisdiction of the local insular courts, such as smuggling goods in evasion of revenue laws, larceny of United States property, controversies between citizens of different States and of foreign States, violation of the United States postal laws, &c., &c., and pursuant to authority from the President of the United States, conveyed by endorsement of April 14, 1899, from the Acting Secretary of War, and after full conference with the supreme court and members of the bar of the island, a United States provisional court is hereby established for the Department of Porto Rico.

II. The judicial power of the provisional court hereby established shall extend to all cases which would be properly cognizable by the circuit or district courts of the United States under the Constitution, and to all common-law offences within the restrictions hereinafter specified.

III. Art. III, sec. 2, paragraph 1, of the Constitution is as follows:

1. "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects."

IV. The decisions of said court shall follow the principles of common law and equity as established by the courts of the United States, and its procedure, rules, and records shall conform as nearly as practicable to those observed and kept in said Federal courts. Its terms and places of sitting shall be fixed by the court at such times and places as may be most convenient for the parties litigant and to insure the expeditious transaction of business.

V. The provisional court shall consist of three judges, one of whom shall be known as the law judge and the other two as associate judges, one United States district attorney, one marshal, one clerk, three deputy clerks, one stenographer and reporter, one interpreter, one bailiff and janitor, and one messenger. The law judge shall preside and shall determine and decide all technical questions of law. A majority vote of the bench shall determine all questions of fact. The jury system may be introduced or dispensed with in any particular case in the discretion of the court.

VI. The judges of the provisional court shall be clothed with the powers vested in the judges of the circuit or district courts of the United States.

VII. The district attorney shall be authorized to present to the court informations against all parties for violations of United States statutes and regulations. He shall also in like manner present informations for violations of orders issued by the department commander, relating to civil matters, which may be referred to him from these headquarters. It shall also be his duty to represent the United States in all suits to which it is a party, and to perform such other duties as usually pertain to the district attorneys in the Federal courts of the United States.

VIII. In order to define more clearly certain branches of the criminal jurisdiction of the provisional court, it is hereby provided that it shall include and be exclusive in the following classes of cases:

First. All offences punishable under the statutory laws of the United States, such as those indicated in Paragraph I of this order.

Second. Offences committed by or against persons, foreigners or Americans, not residents of this department, but who may be traveling or temporarily sojourning therein, or against the property of non-residents.

Third. Offences against the person or property of persons belonging to the army or navy, or those committed by persons belonging to the army or navy, not properly triable by military or naval courts; but not including minor police offences.

Fourth. Offences committed by or against foreigners or by or against citizens of another State, district, or Territory of the United States, residing in this department.

IX. Cases arising under Article XI of the Treaty of Peace between the United States and Spain will be determined as therein provided.

X. In civil actions when the amount in controversy is fifty *dollars* ($50) or over, and in which any of the classes of persons above enumerated in Paragraph VIII are parties, or in which the parties litigant by stipulation invoke its jurisdiction, shall be brought in the provisional court: *Provided*, That in the determination of all suits to which Porto Ricans are parties, or of suits arising from contracts which have

been or shall be made under the provisions of Spanish or Porto Rican laws, the court shall, as far as practicable, conform to the precedents and decisions of the U. S. courts in similar cases which have been tried and determined in territory formerly acquired by the United States from Spain or Mexico. In all other civil actions the case shall lie within the jurisdiction of the proper insular court as now provided by local law.

XI. If any party litigant shall feel aggrieved by the judgment or decree of said court, a stay of ninety days shall be granted such party before the execution of such judgment or decree, upon the filing of a bond by him with sureties in an amount and with such conditions as the court may determine, for the purpose of allowing such party to make application to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree. But if at the end of said ninety days such process has not been issued by the Supreme Court execution shall forthwith issue.

XII. The department commander will exercise the power of pardon, commutation, or mitigation of punishment in criminal cases.

XIII. All fees, fines, and costs paid to the clerk of the provisional court shall be turned over by him at the end of each calendar month to the treasurer of the island with a statement of the sources from which they are received.

XIV. Members of the bar of Porto Rico will be admitted to practice in the provisional court upon presentation of a certificate signed by the president of the supreme court of Porto Rico certifying to their professional standing.

XV. All lawyers practicing in the provisional court who are unfamiliar with the English language shall be permitted, upon application, to use their own interpreter when addressing the court.

XVI. The court shall adopt an appropriate seal which will be procured by the treasurer of the island. The clerk of the court shall have the custody of the seal for use in attesting legal documents in the usual manner.

XVII. In accordance with the provisions of Paragraph V of this order, the following appointments are announced to take effect July 1st, 1899:

To be law judge, Noah Brooks Kent Pettingill.

To be provisional United States attorney, J. Marbourg Keedy.

The following officers are hereby detailed on the special duty set opposite their respective names:

Major Eugene D. Dimmick, 5th U. S. Cavalry, Major Earl D. Thomas, 5th U. S. Cavalry, associate judges of the U. S. provisional court.

1st Lieutenant Robert Alexander, 11th U. S. Infantry, clerk of the U. S. provisional court.

Private Samuel C. Bothwell, Troop D, 5th U. S. Cavalry, is detailed on special duty as marshal of the U. S. provisional court.

The necessary deputies will be detailed in subsequent orders.

The officers named will proceed to San Juan and report to the adjutant-general of the department.

The travel enjoined is necessary for the public service.

By command of Brigadier-General Davis.

W. P. HALL,
Adjutant-General.

GENERAL ORDERS, No. 118. } HEADQUARTERS DEPARTMENT OF PORTO RICO, *San Juan, August 16, 1899.*

Upon the recommendation of the judicial board the following reorganization and functions of the judiciary of this island were approved on August 10th, 1899, and are published for the information and guidance of all concerned:

1. The organization and functions of the courts of justice of this island will from the 10th inst. undergo reforms in accordance with the following dispositions:

2. There shall be a supreme court of justice with fixed residence in the city of San Juan, composed of a chief justice and four associate justices, who jointly will constitute a judicial bench for all civil and criminal business; the court shall also have a prosecuting attorney, one secretary, two court clerks, one file clerk and taxer of costs, six clerks, one janitor, and two bailiffs.

3. The island is divided into five judicial districts, whose respective seats shall be San Juan, Ponce, Mayaguez, Arecibo, and Humacao.

4. The judicial district of San Juan will comprise the following municipalities: The city of San Juan, Vega-baja, Vega-alta, Corozal, Naranjito, Toa-alta, Toa-baja, Dorado, Bayamon, Rio-piedras, Trujillo-alto, Carolina, Rio-grande, Loiza, Caguas, Aguas-buenas, Comerio, Cayey, and Cidra.

5. The judicial district of Arecibo will comprise the following municipalities: Arecibo, Manati, Morovis, Ciales, Barceloneta, Utuado, Hatillo, Camuy, Quebradillas, and Lares.

6. The judicial district of Humacao will comprise the following municipalities: Humacao, Piedras, Naguabo, Fajardo, Yabucoa, Maunabo, Juncos, Gurabo, San Lorenzo, Patillas, and Vieques.

7. The judicial district of Mayaguez will comprise the following municipalities: Mayaguez, Añasco, Rincón, Aguada, Aguadilla, Moca, Isabela, San Sebastian, Las Marias, Maricao, San German, Sabana-grande, Lajas, and Cabo-rojo.

8. The judicial district of Ponce will comprise the following municipalities: Ponce, Juana-Diaz, Coamo, Barros, Adjuntas, Peñuelas, Salinas, Guayanilla, Yauco, Guayama, Santa Isabel, Aibonito, Barranquitas, and Arroyo.

9. Justice in civil and criminal matters will be administered in each district by a court established in its respective capital. These courts will have exclusive jurisdiction and public oral trial of all classes of civil and criminal matters, under the forms and procedure established further on in this general order.

10. Each district court will be composed of three judges, one of whom shall be presiding judge, and who jointly shall constitute a bench for civil and criminal business. To each district court there shall be attached a prosecuting attorney, who will represent the law in criminal cases, and in civil cases when in order.

11. The district court will be assisted by one secretary, two chamber clerks, one court janitor, and two bailiffs.

12. The civil suits in progress of appeal before the supreme court will be transferred to the San Juan district court acting as a court of second instance, which shall hear and decide them in conformity with the law now in force. Criminal cases, except those awaiting appeal, shall also be turned over to the San Juan district court by the supreme court.

13. Criminal cases in process before the court of Ponce will be turned over to the district court to be established for that district. The court of Mayaguez will also turn over its business to the district court likewise to be established there.

14. Business in progress before courts of instruction and 1st instance courts shall be turned over with due formalities to the district courts corresponding to each respective judicial district.

15. The criminal business transferred from the abolished courts shall be proceeded with by the district courts. Matters of civil litigation shall also follow their course up to the step in procedure known as presentation of proofs, when they shall be continued under the rules of civil oral suits established by this general order. If said civil business shall have got so far as presentation of proofs without concluding same the remainder shall be heard in oral suit, but if the suit be found in a stage of proceedings subsequent to the presentation of proofs it shall be finished and decided by the district courts in conformity with existing proceedings after public hearing, it being understood that recourse of cassation against the decision shall only be allowed within the dispositions of this general order.

JUDICIAL RESPONSIBILITY.

16. The administration of justice shall be carried on with entire independence and without any other limitation than the civil or crim-

inal responsibility which judges or courts may incur by reason of their actions, for which they will be answerable as provided in General Orders, No. 98, current series, these headquarters.

17. The investigation of charges in the cases treating of judicial responsibility may be given in charge of judicial functionary of category superior to the accused, but only the supreme court in banc shall authorize the presentation of the charge.

18. Civil responsibility of judges, judicial functionaries, and attorneys shall be incurred for the following reasons: Manifest infraction of the law, corrupt misstatement of facts, and negligence or want of diligence in complying with judicial duties and functions.

19. Civil responsibility may be demanded before the supreme court and under the rule established for civil oral suits before the district courts by the parties prejudiced.

20. No appeal lies against decisions of the supreme court.

21. Civil or criminal responsibility incurred by minor functionaries of the administration of justice shall be exacted before the district or municipal court corresponding and in the usual form established by ruling dispositions.

22. It shall not be necessary to give bond or establish a preliminary suit in order to lodge accusation or complaint against judicial functionaries or attorneys.

23. When the members of the supreme court incur responsibility they shall be tried by a special tribunal, as established in paragraph 13 of General Orders, No. 98, current series, these headquarters.

MUNICIPAL COURTS.

24. There shall be a municipal court in each municipal district. Each municipal court shall consist of one judge and two associate judges, who shall jointly decide and sign all the cases that have been properly brought before the court and determined by the same.

25. In criminal matters municipal judges shall have cognizance in all misdemeanors established by the ruling Penal Code, as well as petty thefts, frauds, and offences against property in cases where the amount of the object of the offence or damage occasioned does not exceed five dollars, U. S. currency, which offences shall be considered misdemeanors, with the exception of those comprised in article 538 of the Penal Code, which shall be judged by the corresponding district court. They shall also have cognizance in assaults where the healing of wounds caused shall have been completed in not more than fifteen days. In all these cases they shall apply the respective punishments stated by the code.

26. In civil matters municipal judges shall have cognizance of all litigation where the amount at stake between litigants does not exceed four hundred dollars, U. S. currency.

27. It shall also be the duty of municipal judges to prepare the preliminaries in criminal cases within the limits of investigation, substantial proof of punishable acts, their nature, gravity, and essential circumstances, search for the author or authors, their detention or imprisonment in accordance with the law, and the seizure of the instruments of the crime or objects which might convict, in cases where such exist. These preliminaries must be practiced by municipal judges within the period of six days after they receive the information that a crime has been committed.

28. The police force, as a whole and individually, is also obliged to attend to the preliminary investigation of all crimes until the appearance of the municipal judge, to whom they will give notice immediately.

29. As soon as municipal judges have completed the preliminary investigations in criminal cases within the period previously fixed they shall send them by a police officer without delay to the attorney of the respective district court, together with the prisoners as supposed authors of the crime, if any has been made.

30. The designation of the associates shall be made by lot, in the following manner: Each municipal judge shall request the respective alcalde to furnish him with a list of competent persons or residents with academic or professional diplomas, and of such persons as have held the position of alcalde, councillor, or municipal judge, and another list of an equal number of municipal taxpayers, in the order of the amount paid, beginning with the largest amount. These lists, which shall be rectified or added to each year, shall include only persons of more than 21 years of age who know how to read and write.

31. On the first day of each quarter, or every three months, the municipal judge shall call a meeting of the persons inscribed in the two lists, and publicly and in the presence of those attending will draw by lot one from each list, so as to form pairs, until both lists are exhausted. This will cause each pair to be formed of one competent person and one taxpayer. On the conclusion of the drawing a list shall be prepared of the associates who have so served during the quarter, which shall be posted in the court room, duly signed by the judge, secretary, and others present.

32. The associates, in the order of their respective terms and without prejudice to the particular obligation of each when his proper turn arrives, shall act as substitutes one for the other.

33. The municipal judge shall advise the associates when their turn arrives, stating the day and hour a sufficient time beforehand. With this object municipal judges shall name one, two, or more days, if necessary, in each week for the prompt and orderly decision of business in hand.

34. Municipal judges shall receive under oath, subject to the penal-

ties of perjury, statements from the associate judges that no motive or just and legal impediment preventing them from sitting on the case connects them with the litigants.

35. The associate judges whose turn it is may have cognizance of all suits awaiting decision on the day corresponding to such turn, which suits shall not be passed on for the cognizance of other associates.

In the act of the trial shall be stated the decision, which shall contain the result of the voting and the resolution of the pending cases, without the form known as "resultando y considerando."

36. Against the decision of municipal and associate judges free appeal will lie to the respective district court. Recourse of appeal must be had within five days, counting from the day following the notification of sentence.

37. An apperance must be put in before the district court within a period of ten days after notice being served.

38. Both parties having put in an appearance, the district court shall set a day and hour for the public hearing, at which either the litigants, their legal representative, or their lawyers may appear.

39. No appeal of any sort shall lie against the decisions of the district courts in civil or criminal verbal suits.

40. As a recompense for the increased work which the foregoing imposes on the municipal courts, an amount shall be appropriated in the insular budget for the benefit of the secretaries of said courts, both for personal services and materials. For this purpose different categories shall be formed, taking into consideration the greater amount of work which may fall to the share of the courts in municipalities containing the most inhabitants.

CRIMINAL PROCEDURE.

41. The attorney of the district court, on receiving the summary sent by the municipal judge, shall issue an order for the detention of the prisoners, if any, in the corresponding prison, and within the precise period of ten days shall draw up a bill of charges or present a petition for quashing. In cases of wounding the recovery of the person wounded shall be awaited, which recovery shall be certified to by the physician in attendance, under his exclusive responsibility and without need of ratification.

42. On presentation of the bill of charges by the prosecuting attorney the court will inform the accused thereof, so that he can state whether or not he agrees to the penalty requested, and if not he shall be required immediately to name his lawyer for the defence. If the lawyer named refuses to defend, the first lawyer on the list will be appointed, and the accused will be informed thereof to enable him to give instructions accordingly.

43. As soon as the defence files a bill of conclusions in writing within five days the court will decide upon the admission of the testimony proposed, and shall immediately set a day and hour for the hearing of the oral trial.

44. In the record of the oral trial the petitions of the prosecuting attorney and lawyer for the defence regarding the points which they may consider essential to assuring the exactitude of the evidence of witnesses of experts shall be succintly stated. The question in examination or cross-examination ruled out by the court shall also be recorded.

45. In cases provided for by the Law of Criminal Procedure appeal in cassation will lie against sentences pronounced by the district courts for infraction of law or error in procedure.

46. Against writs or ordinances of the district courts which are not of mere procedure appeal always lies to the same court for reconsideration or amendment.

CIVIL PROCEDURE.

47. All civil litigations between parties when the amount exceeds $400 U. S. currency shall be originally heard and decided before the respective district court in the form established by the following articles.

48. The litigants must be advised by lawyers registered at the bar of this island, and may appear personally or by procurator, as they choose.

49. The claim must be lodged with the district court, which shall first decide whether to admit it, and it shall immediately name, in order of precedence, a judge or member of the court who shall conduct the preliminaries of the suit up to the oral hearing. Said judge will make all the orders of mere procedure, and the district court the writs and resolutions not of that character.

50. On the admittal of the claim, it shall be handed to the defendant in the suit for him to reply within a period of twenty days, which can not be extended, and within which time he must also put in an appearance in the suit. Pleas of counterclaim will be allowed, and in such the demandant will have three days to answer the counterclaim.

51. On reply being made to the claim and the plaintiff being furnished with a copy of such reply, or on the defendant being accused and declared in default, the preliminary judge shall cite the litigants for a verbal hearing, setting a day and hour therefor with notice of not less than fifteen nor more than twenty days.

52. Both litigants or their legal representatives, accompanied by their respective lawyers, shall appear at this hearing and shall present in writing a notice of the testimony of every description which each

intends to call for. At this meeting the lawyers on both sides may amplify or add to the documents they had drawn up.

53. The preliminary judge shall confine himself to hearing the petition of the litigants, noting down briefly and succinctly the arguments presented by each one, and after ordering that the documents presented form part of the records shall declare the hearing terminated and shall reduce to writing the minutes thereof, giving notice to the court, at its first session, of the notices of testimony presented, for the court to resolve therein as is proper.

54. If neither of the litigants have asked for hearing of testimony in their documents of claim and reply, the court shall immediately set a day and hour for a public hearing, at which the lawyers for the complainant and defence shall state their client's case.

55. The district court shall examine the testimony proposed to be submitted, admitting that which they consider pertinent, and at once setting a day and hour for the hearing of the civil oral suit.

56. If testimony is to be taken outside of the territory of this island, the necessary rogatory letters trial shall be granted in the proper form and through the proper channel, and the hearing of the suit shall be put off until the extraordinary stay be terminated or the testimony taken by commission be returned. For the comparison of public documents with their originals, the court when deciding on the admission of testimony shall issue letters mandatory containing the necessary clauses conferring sufficient power on municipal judges of the districts where the comparison is to be made. Should the comparison have to be made outside of his jurisdiction, he will grant the required letters of rogation.

57. On the day of the hearing the testimony proposed shall be examined before the court, and with the intervention of the lawyers of both parties, who shall examine the witnesses or experts in turn by questions, cross-examination, or declarations which they consider necessary for their case within the matter under discussion and that proposed in the document of testimony. The court may throw out any suggestive, captious, or impertinent question or cross-question. Each witness or expert shall be examined first by the lawyer for the case presenting him, afterwards by the lawyer for the other side, if he wishes, and lastly by the court, if wishing to make clear or ask for explanation of any points it thinks fit.

58. The secretary of the court shall draw up the minutes of the suit, recording substantially the result of evidence and the cross-examining of the lawyers.

59. On the termination of testimony offered the lawyers of both parties may comment on the question under discussion and the rights of their clients. They are allowed one opportunity to rectify the allegations adduced in their pleas. The suit shall then be declared closed,

and decision must be given within not more than ten days, counting from the day following the termination of the suit. Said sentence must be drawn up and written in the form established by the Law of Civil Procedure when referring to major suits.

60. The appearance of witnesses and experts shall be compulsory except when, in the opinion of the court, they can allege and prove just cause. Any witness or expert not appearing, without just cause, shall be fined not exceeding $50, at the discretion of the court.

61. Each expert or witness should be indemnified by the party he appears for; and for this purpose, on the termination of each suit, the court will fix the amount of indemnity and will immediately inform each of the litigants or their legal representatives the amounts they are called on to pay to each witness, except when litigating as paupers. In this case indemnities shall be paid in the same manner as those paid to witnesses or experts in criminal cases.

62. Should the defendant present a dilatory plea in abatement, evidence shall be taken thereon, and at the conclusion of the evidence the lawyers on both sides shall present their argument verbally, the main suit being meanwhile suspended for the time purely necessary for the court to give a succinct decision in the incidental matter. If the plea is sustained, it shall of course have effect as against the claim; if overruled, the original suit shall continue its course.

63. Costs shall always be paid by the litigant who loses his case on all points. In other cases the court shall give an equitable decision in the matter of costs.

64. By costs are understood: Lawyer's fees, procurator's fees, indemnities for witnesses and experts, and the legal expenses necessarily incurred as a direct consequence of litigation.

GENERAL PROVISIONS.

65. Both in civil and in criminal matters judges shall discuss their decisions privately, but the voting thereon must be held at a public hearing and in the presence of the litigants or their legal representatives. The presiding judge shall put the question or questions on which a case turns separately to the vote, and shall endeavor to separate duly the different points debated. Each of the judges shall reply simply yes or no, and the decision shall be immediately recorded according to majority of votes. In civil matters the decision shall be reduced to form by the judge who conducted the preliminaries, unless he dissent from the decision. In criminal matters it shall be done by the judges by turns.

The dissenting judge shall write his opinion at the foot of the decision.

ADDITIONAL CIVIL PROVISIONS.

66. All the attributes conceded to judges of first instance under the Law of Civil Procedure in proceedings relating to meetings of creditors, bankruptcy, intestacy, probate, and other matter relative to declaration suits and suits in liquidated claims shall remain in force and shall be exercised by the district courts; nevertheless, should the case arise that in any of these proceedings contest occurs within the limits of the law, the district court shall hear the claim and rebuttal and the evidence in the manner previously established, and shall proceed to decide thereon in civil oral suit.

67. The attributes in favor of judges of first instance mentioned in the Law of Civil Procedure and the provisions relating to precautionary attachments, the giving security for property in litigation, the execution of judgments, voluntary jurisdiction, and other dispositions relating to judicial questions of a general character shall also remain in force and be transferred to the district courts.

68. In all such cases, the judges of the district court, by turns, shall conduct the preliminary proceedings, but the court itself shall issue such writs and orders as are not merely of procedure.

69. In suits of liquidated claims the district courts preserve the attributes enjoyed by judges of first instance, following the Law of Civil Procedure up to such step as the reply to the claim or failure to reply thereto, in which case the preliminary judge will cite the litigant to appear and submit the proposal of evidence to be offered, after which the suit shall continue under the rules established for civil oral suits in general.

70. The provisions of the Law of Civil Procedure relative to the form of presenting claims and replies, proposal of proofs and legal formulas in general shall continue to exist and be applied. Documentary proofs may be presented optionally together with the claim or reply, or at the hearing held for the proposal of proofs. The attendance and advice of a lawyer for each litigant is obligatory in civil oral suits and other cases established by said law of procedure.

71. The system of procedure established by the law of hypothecation and other special laws shall remain in force, it being understood that the district courts assume the jurisdiction and faculties of the abolished supreme court, territorial audiencias, and courts of first instance, all cases in which judicial contest arises being settled in single instance and by civil oral suit.

72. All steps, exceptions, and proofs in the various classes of suits shall be such as required by the Law of Civil Procedure and according to whether the suit be declarative, liquidated claim, injunction, eviction, or of other character. Dilatory exceptions, when authorized by the law, shall be presented conjointly with peremptory exceptions, and

in corresponding order, according to their respective nature. In the same form and in one written document, proposal of proofs relative to both classes of exception must be made.

73. Petitions for annulment must be pleaded during the oral hearing, and the court will previously decide in the form established for dilatory exceptions whether they affect the essential validity of the suit. The lawyers for both sides may enter the protest they think fit, for the purpose of appeal against error in procedure, which protests shall be recorded in the minutes.

GENERAL CIVIL AND CRIMINAL PROVISIONS.

74. All provisions of the laws of civil and criminal procedure referring concretely and specially to forms or manner of procedure different or contrary to the prescriptions of this order are abrogated.

75. Verbal suits and proceedings before municipal courts, both in civil and criminal matters, shall retain the same form as the present law orders.

76. The judicial board created by General Orders, No. 98, c. s., Headquarters Department of Porto Rico, will proceed as soon as possible to codify such dispositions governing civil and criminal procedure as remain in force. These shall be divided into two volumes, civil and criminal, respectively, and shall be published in the accustomed manner for the information of all concerned.

77. All disputes or differences between judicial and gubernatorial authorities shall be decided by the commander in chief of the department after hearing the opinion of the supreme court and its attorney.

APPEALS TO THE SUPREME COURT.

78. Appeal to the supreme court will lie in all civil suits for infraction of law and error in procedure in the cases which the law of civil procedure defines for the latter, but not for suits heard before municipal courts.

79. Besides the cases defined by the Law of Civil Procedure, such appeal will also lie for error in the consideration of proofs.

80. In criminal trials, appeal may be taken for infraction of law and error in procedure in cases defined by the Law of Criminal Procedure.

81. Notice of appeal shall be given to the sentencing district court not later than ten days after the day of notification of sentence.

82. The district court shall decide whether to allow the appeal only when such is to be taken for error in procedure, and its decision adverse may be appealed against before the supreme court within fifteen days. For this purpose the district court when denying right of appeal shall grant a literal and certified copy of the ruling against which appeal was sought to the party appealing within three days at

the latest, and besides shall order both sides to appear before the supreme court.

83. On the termination of the time allowed for appearance and on the appearance of the applicant, the supreme court after public hearing shall immediately give a decision on the appeal against the ruling of the lower court debarring right of cassation. The lawyers for both sides may be present, and the matter must be decided before all other business in hand.

84. Should the district court allow appeal the original documents must be sent to the supreme court after citing the parties to appear during a period of ten days.

It shall not be necessary to give any bond on appeal to the supreme court.

85. On the appearance of the appellant before the supreme court of cassation the documents shall be given him to enable him to base and establish his appeal in writing within twenty days. His appeal in writing shall be handed to the other litigant for twenty days also, and on the return to the court of all the documents it shall set a day and hour for a public hearing at which the prosecuting attorney and the lawyers on both sides shall state their cases according to whether the matter be a civil or criminal suit.

86. The supreme court shall give its verdict by vote in public in the form previously established in this order for district and municipal courts and within five days of the public hearing. After giving decision, the original documents shall be returned to the proper court with a certified copy of such a decision. All sentences of the supreme court of justice shall be published in the official gazette.

87. All provisions of the laws of civil and criminal procedure relative to the substantiation of appeals which are in opposition to the provisions of this order are repealed.

COMPLEMENTARY PROVISIONS.

88. The positions of judge or prosecuting attorney of the supreme court of justice and district court shall be filled by lawyers only.

89. Besides the legal diploma the nomination of judicial functionaries shall be made after taking into account services rendered, seniority at the bar, and known ability in the profession.

90. The secretaries of the supreme court of justice and district courts must also be lawyers. Taking into account the employees of the courts of first instance who by virtue of this order will lose their positions, it is hereby ordered that such "escribanos" as possess the necessary conditions as to capability, honesty, and good service in their last position will be given preference in selecting secretaries of the district courts.

91. Municipal judges must also be lawyers registered at the bar of this island, but when such are not available in the respective municipalities, persons possessing the best conditions of fitness and capacity for judicial functions may be nominated. Lawyers holding the office of municipal judge are not permitted to practice law.

92. The nomination of municipal judges and attorneys shall be made in the manner established for the rest of the personnel of the administion of justice, until such time as they may be chosen by suffrage.

93. Secretaries of the municipal courts shall be nominated in the manner established by the preceding paragraph.

94. The court shall nominate one or more supplementary judges to substitute the incumbent in case of vacancy, absence, or sickness. Each attorney shall also nominate his substitute for the same reason.

These nominations must be made from among lawyers registered at the bar of this island who are practising in the town where the court sits. Substitute judges shall receive six dollars for each day's service in the district courts and ten dollars if serving in the supreme court of justice.

95. Judges of the courts and attorneys do not require any permission for absenting themselves, but shall receive no salary during their absence and must see to it that a substitute fill their places.

96. Notice and proof to the entire satisfaction of the court of which he forms part must be given by a judge or attorney when sick, during which period only one-half of the salary shall be allowed.

97. The presiding judge of each court shall give notice, under his responsibility, to the solicitor-general of the absence of any of its members through sickness or other causes.

98. Should the sickness last more than three months, the court of which the sick judge forms part shall so inform the solicitor-general to enable him to take the necessary action. The above provisions are applicable to court secretaries, court clerks, and other employees of the administration of justice.

99. The court shall also inform the attorney-general of all vacancies, absences, and substitutions, for purposes of keeping the proper accounts.

By command of Brigadier-General Davis:

W. P. HALL,
Adjutant-General.

GENERAL ORDERS, No. 173.

HEADQUARTERS DEPARTMENT OF PORTO RICO,
San Juan, October 28, 1899.

I. Subpœnas for witnesses, letters rogatory, and all other legal documents and instruments which issue from the courts of this island addressed to courts or officials of foreign countries must in every case

be accompanied by the necessary fees to cover all costs for the execution and return of such papers. Such fees should be transmitted in foreign exchange, either by bill on London or on some accredited banking house of the country to which the document is to be sent.

II. All papers of the character herein referred to will be transmitted to these headquarters through the solicitor-general, who will see that the proper fees are enclosed before forwarding them.

By command of Brigadier-General Davis:

W. P. HALL,
Adjutant-General.

GENERAL ORDERS, No. 182.

HEADQUARTERS DEPARTMENT OF PORTO RICO,
San Juan, November 18, 1899.

Upon the recommendation of the judicial board, paragraph 82, General Orders, No. 118, current series, these headquarters, is amended to read as follows:

The district court shall decide whether to allow the appeal, not only when such is to be made on account of an error in the procedure, but also because of infraction of law, and its decision adverse thereto may be appealed against before the supreme court within fifteen days. For this purpose the district court, when denying the right of appeal, shall grant a literal and certified copy of the ruling against which appeal was made to the party appealing within three days at the latest, and besides shall order both parties to appear before the supreme court.

By command of Brigadier-General Davis:

W. P. HALL,
Adjutant-General.

GENERAL ORDERS, No. 186.

HEADQUARTERS DEPARTMENT OF PORTO RICO,
San Juan, November 24, 1899.

Whenever it may come to the knowledge of any court in this department before which is pending any civil cause that by the rules and practice of such court there must be made a publication in some newspaper of some order, rule, notice, or other proceeding, such court, or any judge thereof, shall have the power to designate the newspaper in which such publication shall be made, and shall also fix the legal charges for the same. Such publication shall be in the language which is the official language of the court having jurisdiction of the cause. Preference shall be given to newspapers published in the town or city wherein one or more of the defendants may reside, if in this department, or in the town or city wherein all or a part of the subject-

matter of the cause may be located, if in this department, as the court may direct. In the event of such local publication being deemed by said court impracticable, the publication shall appear in some newspaper located in the city of San Juan. Nothing in this order shall in any way affect the legality of such publications appearing in the Official Gazette or in any other newspapers which may be recognized by the Government as official.

By command of Brigadier-General Davis:

W. P. HALL,
Adjutant-General.

GENERAL ORDERS, No. 194.

HEADQUARTERS DEPARTMENT OF PORTO RICO,
San Juan, November 28, 1899.

The following schedule of fees to be charged by the judges, prosecuting attorneys, secretaries, and bailiffs of the various municipal courts of the island, and to be retained by those officials, is published for the information and guidance of all concerned:

CIVIL MATTERS.

	Dollars.
1st. The municipal judges shall receive for each order or writ	0.50
2nd. For each final sentence	1.25
3rd. For each testimony taken	.20
Double fees shall be paid should the testimony be taken through an interpreter or outside the court-room.	
4th. For judgment ordering a dispossession of property they shall receive for each hour	1.50
5th. For a meeting held for the purpose of constituting a family council they shall charge for each hour	1.00
6th. For each appearance in court of the parties concerned for the purpose of making petitions admitted by law	.25
7th. For each order, letter requisitorial, requisition, letter rogatory, and information	.50
8th. For each official communication	.15
9th. For each edict	.25
10th. For attendance at auctions, inventories, seizure of property, ocular inspections, demarcation proceedings, and proceedings for placing persons in charge of others, not requiring more than an hour	1.50
And for each additional hour	1.00
11th. For the performance of the act of reconciliation (amicable settlement of disputes), including certificate thereof, they shall receive in full payment of fees	1.50
12th. When the act does not take place, owing to the nonappearance of one of the parties summoned, including the certificate	.75
13th. For all orders, acts, and proceedings connected with an oral trial, including the sentence, except the proceedings of provisional or cautionary attachments, they shall charge, if the amount involved does not exceed one hundred dollars	1.00
From one hundred to two hundred, twice, from two hundred to three hundred, three times, and from three hundred to four hundred, four times that amount.	

	Dollars.
14th. When, after the defendant has been summoned, the trial does not take place, owing to the nonappearance of the parties concerned	0.75
15th. Prosecuting attorneys shall charge for each written statement of their opinion regarding a civil case in which they have to intervene	1.00
16th. In all other acts and proceedings, where they have to assist, together with the judges, they shall charge one-fourth less than the fees assigned to the latter.	
17th. The secretaries of the municipal courts shall receive for each order or writ	.30
18th. For each sentence	1.00
19th. For each notification, summons, requisition, or citation for a later date, executed in the court room or in the place destined for that purpose, including a copy of the decision	.40
20th. For each of said proceedings or formalities, when taking place outside the places mentioned	.60
21st. Should same be effected by means of decrees, owing to the absence from his domicile of the party concerned, including said decree	.70
22nd. If the notified person shall refuse to sign, and it shall be necessary that same be done by two witnesses	.80
23rd. For drawing up the reply, when same must be admitted, they shall charge in addition	.20
24th. For each notification made in the court rooms	.25
25th. For each annotation made in contracts with tenants, or in other documents, which give evidence of possession, attachments, appointments of judicial administrators, their removal, or any other circumstance or act taking place by virtue of the order of the judge	.25
26th. For the act of taking off annotations or comments on documents, proceedings to show that same has been done, and the annotation which must remain in the record of proceedings	.50
27th. For drawing up documents relating to deposits of money, jewels, or valuables, and of receipt therefor, when said deposit be made in the court room	1.00
28th. For proceedings connected with the delivery of the money or objects so deposited, either to the parties concerned or in public establishments	1.00
29th. When, pursuant to law, or by order of the judge, they shall make a written statement of the delivery of documents to any person or public office	.50
30th. For each testimony of the parties concerned, witnesses and experts, they shall charge for each folio	.30
Should the testimony be taken through an interpreter, or outside of the court room, double fees shall be charged.	
31st. For each rogatory letter to any court of justice, warrant, requisition, order, certificate, and information	1.00
32nd. For each official communication, order, or edict	.25
33rd. For a trial of an eviction case, each hour consumed	1.00
For meetings held for the purpose of constituting a family council, each hour.	1.00
34th. For each hour spent at auctions, in placing persons in charge of others, attachments, ejectments	1.00
35th. For drawing up inventories, seizure of property, giving possession and description thereof, denunciations, ocular inspections, and confrontations, each hour consumed	.75
36th. For appraisement, distribution of the respective shares, attestation of costs, and liquidations of accounts and interests, each folio covered by said proceedings	.60

	Dollars.
37th. For the examination of writs and documents of liquidation referred to in the previous article, each folio required to be examined	0.04
38th. For looking up any record	.80
39th. For the act of reconciliation (amicable settlement of disputes), including the certificate of the act	1.50
40th. When said act is not carried into effect through default of appearance of one of the parties concerned, including the certificate	.80
41st. For all the proceedings in an oral trial, including the sentence, but exclusive of those of a provisional or cautionary attachment	1.75
For the increase of aforesaid fees the same gradation in the importance of the matters shall be observed as that established for district judges.	
42nd. When the trial does not take place the fees for the preliminary proceedings shall be	.60
43rd. Bailiffs shall charge for each summons	.40
44th. When the summons has to be made outside the towns or villages they shall charge double fees.	
45th. For each requisition by virtue of a judicial order	.40
46th. For looking up witnesses when the party concerned refuses to sign	.15
47th. For each document to be served by them	.25
48th. For assistance at each judicial act	.50
49th. For assistance at each judicial act outside the court room, each hour consumed	.70

CRIMINAL MATTERS.

50th. For each trial of minor offences the judges shall charge, judgment included, per hour	2.00
51st. The secretary shall charge for the same	1.50
52nd. The prosecuting attorney shall charge for the same	1.00
53rd. The bailiff, for ditto	.80
54th. In the execution of judgments the same fees shall be charged as have been established for civil proceedings.	

GENERAL PROVISIONS.

1st. The former schedules for experts, interpreters, appraisers of costs, etc., shall remain in force.

2nd. The costs of verbal proceedings, whereof the amount involved does not exceed one hundred dollars, must not exceed ten per cent, and in other trials not more than twenty per cent.

3rd. Double fees shall be charged for proceedings that take place after sunset.

4th. In case of eviction from a house, the rent of which does not exceed ten dollars, all the fees, including those for ejectment, shall not exceed three dollars.

5th. The secretary shall issue a receipt to the parties concerned for all the fees in each case, specifying separately the article of the schedule under which each item is charged.

6th. The secretaries shall note at the foot of each signature, for which fees are paid according to the schedule, the amount received, and the article of the schedule authorizing said charge.

7th. Upon the termination of each matter or case the secretary shall make a specified statement of all the costs under the schedule.

8th. In proceedings taking place outside court rooms no fees shall be charged other than those set down in the schedule and 50 cents for each hour of journey. The parties concerned shall furnish the necessary means of tranportation according to the uses and customs of the community.

9th. Although the parties concerned may have approved the appraisement of the costs, if any excess in the charge of fees should be proven, no matter if it amounts *to only one cent*, the official shall return in full to the respective parties twice the amount of all the fees he may have charged.

By command of Brigadier-General Davis:

W. P. HALL,
Adjutant-General.

GENERAL ORDERS, No. 47.

HEADQUARTERS DEPARTMENT OF PORTO RICO,
San Juan, March 6, 1900.

I. The following interpretation of certain articles of the Treaty of Paris by the War Department is published for the information and guidance of all concerned:

Articles IX, X and XI of the Treaty are intended to guarantee to Spanish subjects remaining in the Island (Puerto Rico) certain rights and privileges.

Article IX guarantees Spanish subjects the right to continue allegiance to the Spanish Crown and still remain in said territory, retain their rights of property and to engage in business, which said rights are to be exercised pursuant to the laws of the country applicable to other foreigners.

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Article XI guarantees to Spanish subjects the right to sue and be sued in the courts of the Country in like manner as citizens.

Said stipulations were not intended to confer special privileges upon Spanish subjects, but to secure them certain rights and privileges enjoyed by other residents by prohibiting their denial to Spanish subjects. The United States Government agreed with the Spanish Government that subjects of Spain residing in said territory should not be discriminated against because of their Spanish citizenship. It was not intended, nor required, nor desired that they should possess any special advantages or immunities by reason of their Spanish citizenship. The United States stipulated that as regards property rights they should stand on a footing of equality with other foreigners domiciled in the Island.

The property rights of Spanish citizens are subject to such laws as are applied to other foreigners. (Art. IX.)

But in judicial proceedings the rights guaranteed to Spaniards are those enjoyed by the natives. Spanish citizens are subject in matters civil and criminal to the courts of the country and required to pursue the same course as the citizens of the country to which the courts belong. By citizens is meant inhabitants owing allegiance to the authority maintaining law and order.

Spanish subjects are not exempt from the laws or the jurisdiction of the courts by reason of their citizenship. The purpose of the Treaty is to make impossible to refuse such jurisdiction and thereby secure to Spanish subjects the right to appear before the courts of the country, demand and receive a hearing on an equal footing with such citizens. Many nations refuse this privilege to aliens. The right to invoke the powers of the court is a privilege essential to the protection of all rights and the Spanish Government very properly desired that its subjects domiciled in the territory surrendered should possess and retain this right. Having the right to invoke the power of all the courts of the country, they are co-relatively bound to respect such powers when invoked by others and the conditions upon which the rights guaranteed by the Treaty are maintained is; "that such rights are subject to the laws of the

country"—the purpose of the Treaty being to prevent the laws of the country from discriminating against Spanish subjects in regard to these matters by reason of their citizenship.

The Provisional Court of Puerto Rico has been instituted, installed and maintained as one of the Courts of the country. Spanish subjects are therefore subject to its jurisdiction the same as other residents of the Island in cases wherein the Court has jurisdiction of the subject matter. It is maintained pursuant to a law of the country and Spanish residents remaining in said Island, or rights arising in said Island are subject to the powers of both the law and the courts.

* * * * * * *

If the case * * * is one wherein a native of Puerto Rico, being made a co-respondent would be required to respond to the mandate of the Provisional Court, it follows that a Spanish citizen must likewise respond to proper service of process, or suffer the consequences of his default.

* * * * * * *

A Spanish mortgagee has not the right to have an action against him tried and determined in an Island Court because he is a citizen of Spain.

II. In accordance with the foregoing interpretation, all questions of jurisdiction arising between the United States provisional court instituted by General Orders, No. 88, series 1899, these headquarters, and the insular courts instituted by General Orders, No. 118, series 1899, these headquarters, will be determined by the said courts in conformity therewith.

III. Pursuant to instruction from the War Department, the offence of counterfeiting coins of the Island of Puerto Rico does not lie within the jurisdiction of the United States provisional court, and General Orders, No. 88, series 1899, these headquarters, is amended accordingly.

By command of Brigadier-General Davis:

W. P. HALL,
Adjutant-General.

INDEX

[References are to articles, except when otherwise stated.]

Abandonment:
Of actions and remedies. (*See* Extinction.)
Of remedy, when to be considered 408, 409
Of merchandise, discharge and intervention, and bond for cargo 2108–2121
Absentees, how to be summoned in proceedings to avoid litigation 467
Abstention of judge, etc., from taking cognizance of a case without awaiting challenge 190, 197, 219
Acceptance of power of attorney by solicitor, when presumed 5
Accounts of solicitors, when to be presented 8
Acknowledgment of credits in insolvency proceedings 1248–1263
When trustees to examine and liquidate credits 1248
Statements to be prepared by trustees 1249
When judge to call meeting of creditors for 1251
Period to elapse between call and holding of meeting 1252
Proceedings at meeting of creditors for ..... 1253 et seq.
How creditors to be informed of action of meeting 1258
Objections to resolutions of meeting 1259
Trustees must support resolutions of majority 1262
(*See* Insolvency proceedings.)
Action:
Appearance in 1
Who may appear in 2
To avoid litigation, parties may appear in person in 4
Not to be commenced until issue of property decided 22
Real, who are competent to hear 62
Personal, who are competent to hear 62
Mixed, who are competent to hear 62
Involving civil status of persons, judge competent in 63
Rendition and settlement of accounts, judge competent in 63
Upon guaranties and the performance of obligations, judge competent in, No. 3 63
Of unlawful detainer, judge competent in, No. 13 63
Of redemption, judge competent in, No 13 63
Of unlawful detainer, judge competent in, No. 13 63
Of redemption, judge competent in, No. 13 63
When to be heard 332
Cause of. (*See* Cause of action.)
Declaratory. (*See* Actions of greater import; Lesser import; Oral actions.)
Of greater import:
What to be decided in 482
Complaint and summons 523–530
What to contain, etc. (*See* Complaint, Summons.)
Dilatory exceptions 531–538
(*See* Exceptions.)
Answers, counterclaims, etc 539–548
(*See* Answers, Counterclaims, Replications, Rejoinders.)
Pendency of second action is a dilatory exception 532

Action—Continued.
Of lesser import:
Parties may appear in person in 4
What to be decided in 483
Complaint to be served on defendant with summons 680
Period for appearance when summoned by edicts 682
Period for defendant to make answer 682
How and when two or more defendants to answer 683
When copies need not be attached to complaint 683
When defendant to be declared in default 684
What exceptions can be pleaded by defendant 686
Counterclaims 687–688
Effect of silence or evasive answers 689
Proceedings not to be suspended, when 691
When judge to order evidence taken 692
Period within which to order evidence taken 692
Period within which to take evidence 695–697
How evidence to be taken 698
How and when witnesses may be challenged 699
Appeals from judgments 701
When to be considered interposed 702
When appellee may agree to the appeal 705
When day to be set for hearing of appeal 708
When judgment to be rendered upon appeal 709
When judgment to include taxation of costs against appellant 709
In what case record to be returned to judge of first instance 710, 711
Oral actions 714–739
Municipal judges only ones competent in 714
Exceptions 715
Action of municipal judge when considered incompetent 716
Action when defendant does not agree to amount of 717
Form of hearing and rendering decision ..... 718 et seq.
Complaint, what to contain and form of 719
When summons to appear to be made 720
Citation of defendant, how to be made 721
Service of complaint, etc., to be entered on record 723
Manner of serving summons when defendant resides elsewhere 723
Citation, how to be made when defendant's domicile unknown 724
Time set for appearance can not be changed, etc 726
When action to be considered abandoned 727
When plaintiff to pay costs, etc 727
Action to proceed in default of defendant 728
Proceedings at the appearance 729
When final judgment to be entered 730
When reservation of rights to be made 730
Appeal 731
When it may be taken 731
Action when appellee or appellant does not appear 734
When final judgment to be rendered 735
Action when there is an adjudgment upon costs 736
Intervention, etc., when municipal judge to decide 738
Action to be taken when request made for permission to prosecute or defend as poor person 739
Executory 1427–1541
(*See* Executory process; Compulsory process; Intervention.)

Action—Continued.
Of unlawful detainer:
General provisions 1559–1567
Judges of competent jurisdiction 1560, 1561
By and against whom actions may be instituted 1562, 1563
When appeal may be taken 1564
When decision to be final 1565
Before municipal courts 1568–1586
How action to be heard and determined 1568
How complaint to be made 1569
Summons for oral action 1570
How citation to be served 1571–1575
Rendition of judgment 1576
Evidence admissible 1577
Taxation of costs 1580
Appeal ..... 1581 et seq.
Before courts of first instance 1587–1592
How to be heard and determined 1587, 1588
Appeal from judgment rendered, proceedings, etc ..... 1589 et seq.
Execution of judgments 1593–1606
Who to execute judgment 1593
When execution of judgment to be proceeded with 1594, 1595
For redemption. (*See* Redemption.)
Act of conciliation. (*See* Proceedings to avoid litigation.)
Acts of voluntary jurisdiction in commercial matters, general provisions .. 2070–2079
(*See* Voluntary jurisdiction.)
Adjudication:
Of profits, losses, etc., in judgments 359
Of property to persons not designated by name 1100–1127
Administration of testate successions: (*See* Testamentary proceedings.)
Of estates of insolvents 1226–1246
When property to be turned over to trustees 1226
Duties of trustees 1227
Payment of expenses 1228
When trustees to render accounts 1229, 1240, 1243
Call of meeting of creditors by judge 1231
Property to be sold by trustees 1232
Manner of making sale 1234
How property to be appraised 1235
Securities, etc., may be sold at auction 1237
Trustees may make compromises 1239
When judge to approve accounts 1241
When books and papers to be returned to insolvent 1244
(*See* Insolvency proceedings.)
Of a bankruptcy 1348–1363
Withdrawal of securities, money, etc., from deposit 1350
Deposit of funds 1351
Urgent sales of property 1352
Extraordinary expenses 1355
Appraisement and sale of property 1356
Orders of commissioner may be amended 1361
Examination of accounts 1362
Claims against trustees for losses and damages 1363
Of property of absentees 2030–2046

Administrative authority. (*See* Competency; Jurisdiction; Remedy of complaint.)
Administrative proceedings to be held before judicial proceedings, No. 7 532
Admission of evidence, etc 549–576
Adoption and arrogation 1824–1831
Agreements:
Reached at proceedings to avoid litigation, who to enforce 475
When action for annulment of, may be brought 476
Alienation of the property of minors, etc 2010–2029
Judicial permission necessary for 2010
Requisites for decree of sale ..... 2011 et seq.
Property to be appraised 2015
Proceedings if no bid received at auction ..... 2018 et seq.
Settlement of question relating to rights of minors, etc ..... 2024 et seq.
Mortgage of property of minors, etc 2029
Amicable compounders:
Settlements by 826–838
Who can be 826
What provisions applicable to, etc 827
Compromise, what to contain 827
Legal effects of 828
Challenge of 830
How to be interposed 831
How to decide questions 832
How judgment to be rendered 834
Remedy against judgment of 835
When judgment final 836
Execution of judgments of 837–838
Appeals for annulment of decisions of. (*See* Appeals for annulment of judgment.
Amounts involved in causes of action:
How to be determined 488
Must be precisely determined 489
Answers:
Counterclaims, replications, and rejoinders 539–548
How defendant to make answer 539
When complaint to be considered answered 540
What exception to be pleaded in 541
(*See* Counterclaim, Replication, etc.)
To be referred to plaintiff 545
Period allowed defendant to answer in actions of lesser import 682
How and when two or more defendants to answer in actions of lesser import 683
Appeals:
General rules, judgments which may be appealed from, terms, effects, etc. 310 379, 381–397, 406–409, 678
From decisions relating to disciplinary corrections 455
Appeals from judgments—
In oral actions 731–736
Of arbitrators 817, 821, 822, 825
Second instance:
General provisions 839–853
When appellant to appear before court 839
When appeal not to be allowed 840

Appeals—Continued.
Second instance—Continued.
General provisions—Continued.
Costs if appeal dismissed 841
Abandonment of appeal 845–848
Action when judgment becomes final 849
To whom judgment to be communicated for execution 852
From final judgments rendered in actions of greater import 854–885
Preparation of abstract 854
To whom abstract to be delivered, etc 855
Evidence when taking of—
Can be ordered 861
To be requested 859
Requests which may be made by litigants 862
Action when request relating to evidence is made 863
When admission of evidence to be ordered 864
Remedies against rulings relating to taking of evidence 866
When judgment to be rendered 872
When period for rendering judgment suspended 873
Appeals for annulment of judgment, etc 874
Argument, written or printed, when permitted 875
When to be ordered 876
What necessary to allow 877
Period within which to be filed 878–880
Remedies against orders relating to 881
If allowed, abstract must also be printed 882
To whom to be distributed 883
Period for rendition of judgment, how to be computed 885
From interlocutory judgments and rulings and in actions other than those of greater import 886–901
To whom record to be referred 887, 888
To whom abstract to be delivered, etc 889
When hearing to be ordered 894, 900
When and how decision to be rendered 895
Evidence, when taking of, can be authorized 896
Period for 897
When relator to present his report 900
For annulment of judgment 1684–1793
Court competent 1684–1686
When it lies 1687
What are considered final decisions 1688
Causes on which it must be based 1689
When, for violation of law or legal doctrine lies 1690
When, for breach of form lies 1691
When, for violation of law, etc., does not lie 1692
Rulings of audiencias, etc., can not be appealed from for annulment of judgment 1693
Requisites for admission of, for breach of form 1694
Deposit required for interposition of 1696, 1697
Preparation of, for violation of law, etc 1698–1713
Interposition and admission of, for violation of law, etc 1714–1730
When appeal to be filed 1714
Documents to be attached to appeal 1716, 1717

Appeals—Continued.
For annulment of judgment—Continued.
When appeal to be filed—Continued.
Constitution of chamber for hearing and decision of 1724
When decision upon admission of appeal to be rendered 1726
When appeal not to be admitted 1727
When appeal to be—
Admitted 1728
Partially admitted 1729
Hearing and decision of, admitted for violation of law 1731–1746
Interposition, etc., of, for breach of form 1747–1765
Where to be interposed 1747
Requisites of, and documents to accompany appeal 1748, 1749
When appeal—
To be admitted 1751
Not to be admitted 1753
Return of deposit to appellant 1764
Adjudgment upon costs 1765
For breach of form and also for violation of law, etc 1766–1771
How appeal to be prepared 1766
Taxation of costs 1769
From decisions rendered by amicable compounders 1772–1778
Documents to be presented with appeal 1772
Statements to be contained in appeal 1772–1773
When to be interposed 1774
Where to be presented 1775
Provisions to be observed in hearing, etc 1776
Taken by the department of public prosecution 1779–1783
What and when appeals may be taken 1779, 1780
Effects of 1781
Payment of costs 1782, 1783
Provisions common to 1784–1793
(*See also* orders at pages 444 and 470.)
When execution of judgment may be ordered 1784
Two or more appeals of same kind to be heard together 1786
Withdrawal of appellant from appeal 1787
Deposit to be returned 1789, 1790
Taxation of costs 1792
For review 1794–1809
When it lies 1794, 1795
Terms within which to interpose ..... 1796 et seq.
Deposit required 1797
When barred 1798
Hearing and determination of 1799–1803
Where to be interposed 1799
Procedure to be observed 1800
Do not suspend execution of judgments 1801
Decisions rendered by virtue of 1802–1809
Appearance:
In an action 1
How to be made 3
When parties may appear in person 4
Of parties, when to be considered attempt at conciliation 463
When nonappearance to be considered confession of judgment 592

Applications for permission to prosecute, etc., as poor person to be passed upon as separate issue 23–30
Taxation of costs in 31, 32
Decision on, does not produce effect of *res judicata* 33
To civil courts for modification of action of ecclesiastical courts 125–152
When can be made 125
Who to pass on 126
Who may apply for 127
Who can not apply for 128
How to be prepared 131, 132
Appointment of trustees in insolvency proceedings 1191–1225
(*See* Insolvency proceedings.)
Of officials of the supreme court of Cuba ..... page 438
Appraisement and sale of property in execution of judgments 921
Apuntamiento, preparation of, abolished, etc., in Cuba 483
Arbitrators:
Settlements by 789–825
Who can be an arbitrator 789
Number and selection of 790
Requisites of compromise 791, 792
When compromise to be presented to arbitrators 793
How arbitrator to be substituted 794
When compromise of no effect 794
How refusal or excuse of arbitrator from acting to be determined 796
When arbitrators can be challenged 797, 798
Who challenge of, to be presented to 798
When compromise to become null 799
Action in case of death of 800
When period fixed for decision to begin 801
When extension of, allowed 802
Before whom proceedings to be held 803
Claims and documents to be communicated to both parties 805
When evidence to be taken 807
Period for the admission of evidence 809
What means of proof admissible 810
When parties to be cited for judgment 812
What judgment of to include 814
How judgment to be rendered, etc 815
To whom disagreements to be submitted 816
Appeals 817, 821, 822, 825
Period within which to take 818
Remedies against orders of arbitrators 820
And experts, appointment of in insurance contracts 2136–2142
Arrogation: Petition to be presented to presiding judge of audiencia 1831
Assessors to municipal judges, challenge and voluntary abstention 188, 190, 194
(*See* Challenge.)
Associations, corporations, and other judicial entities, who are to appear for in court 2
Attachment:
Of real property of defendant in default 761
How long to continue in force 764
(*See* Seizure.)
And temporary deposit of the value of bills of exchange 2089–2091

Attorneys:
Solicitors and litigants 1–12
Must sign petitions 10
When, may demand their fees of solicitors 12
To be assigned to poor persons 27
When considered to have accepted defense of poor persons 49
Duties of, after accepting 50
Necessity of their intervention in an action and exceptions 3, 5, 10, 11
Fees of—
How to be fixed 422
Which are not to be included in taxation of costs 423
Auditors in testamentary proceedings. (*See* Testamentary proceedings.)
Averages: Classification of and liquidation of gross, etc 2092–2107
Bankruptcy:
Proceedings in 1316–1394
Judge competent in (No. 8) 63
General provisions 1316–1320
Merchant who is bankrupt is not subject to insolvency proceedings 1316
When insolvency proceedings applicable 1317
Proceedings in bankruptcy of railway and other companies 1318
Division of proceedings 1319, 1320
Declaration of 1321–1347
Who may make petition for 1321
How petition to be drafted 1322
When judge to make, upon petition of creditor 1323
Proceedings when bankrupt opposes declaration ..... 1324 et seq.
Rights of creditors opposing rehearing 1326
When judge to order rehearing 1327
Action for losses, etc., instituted by bankrupt 1330
When judge to appoint commissioner 1331
When commissioner to take charge of property, etc 1332
How arrest of bankrupt to be effected 1333
Bail, etc., of bankrupt 1334
How bankruptcy to be made public 1335
Detention of correspondence 1336–1337
When bankrupt to be released 1338
Commissioner to file statement of creditors of bankrupt 1340
Meetings of creditors 1341–1344
Objection to appointment of trustees 1345, 1346, 1347
Administration of 1348–1363
(*See* Administration.)
Retroactive effects of 1364–1375
Trustees have power to demand retroaction 1364
Complaint of omissions to be made to commissioner 1365
Statements to be prepared by trustees 1366–1368
Actions instituted by trustees 1369–1372
Examination, classification, and payment of credits against the estate of the bankrupt 1376–1379
Classification of the bankruptcy and discharge of the bankrupt 1380–1386
How record to be commenced 1380
Statement to be presented by trustees 1381
When judge to make classification 1382
When evidence to be taken 1383
When criminal proceedings against bankrupt to be instituted 1384

Bankruptcy—Continued.
Classification of the bankruptcy and discharge of the bankrupt—Cont'd.
What acts trustees may perform in criminal proceedings 1385
How petitions for discharge to be heard 1386
Settlements between creditors and the bankrupt 1387–1394
When proposition for settlement admissible 1387
Petition of bankrupt for settlement, when to be granted 1388
Extraordinary meeting for discussion of settlement 1390
What creditors can not object to 1391
Bankrupt and trustees to be heard on objection to 1392
Proceedings after expiration of period for admission of evidence 1393
Benefit of poverty. (*See* Poor person; Poverty; Declaration of poverty.)
Bills of exchange, attachment and temporary deposit of the value of 2089–2091
Buildings. (*See* Constructions.)
By-laws are considered public documents 595
Cassation. (*See* Appeals for annulment of judgment.)
Cause of action:
May be submitted to the decision of arbitrators, etc 486
Exceptions 487
Which are to be decided—
In actions of greater import 482
In actions of lesser import 483
In oral actions 485
Amount involved in, how to be determined 488
Certificates issued by brokers are public documents 595
Challenges:
General provisions 188–193
Justices, etc., may be challenged for legitimate cause only 188
What is legitimate cause of 189
Who can interpose 191
When to be interposed 192
Of justices, judges of first instance, and assessors 194
How to be made 194
Action of judge if cause of, considered proper 197
Decision admitting, etc., who to be communicated to 198
When to be disallowed 199
Interposition of, does not suspend action 200
Who to hear and determine 203, 206
Of municipal judges 218–233
(*See* Municipal judges.)
Of subordinate officials of courts 234–247
Of experts. (*See* Experts.)
Remedies against decisions on 237
Separate proceedings on, who to hear, etc 238, 239
Of secretaries of municipal courts, who to replace 242
Does not suspend decision of cause 244
Who to pay costs 245
Of witnesses. (*See* Witnesses.)
Of arbitrators 797, 798
To whom to be presented 798
Of amicable compounders 830, 831
Chambers of justice:
Number of justices necessary to reach agreements 317, 325, 326–329, 441
Their constitution in audiencias and in the supreme court 317, 325

Change of venue. (*See* Inhibition; Declinature.)
Children: Substitution of consent of parents, etc., to contract marriage. 1921 et seq.
Citation:
How to be served 271
By whom to be made 273
Writ of, requisites of 272
In oral actions:
How to be made when domicile of defendant unknown 724
How to be made 721
Of creditors in insolvency proceedings 1191–1225
(*See* Insolvency proceedings.)
Civil disputes, who are competent to hear 51
Civil liability:
Of judges, etc 902–917
How to be enforced 902
When action for can be instituted 903, 904
When action barred 904
Who can not institute action 905
Documents to be attached to complaint 906
When appeal in complaint allowed 908
How to be decided 909
Action against—
Municipal judge, who to hear 910
Judge of first instance 911
Justices of an audiencia 912
Costs, who to pay 915
Judgment rendered upon, can not alter final judgment in action 916
Civil mariage in Cuba 441
Civil rights, persons who do not fully enjoy 2
Civil status, judge competent in actions relating to ..... 63, No. 1, 482
Classification of credits, in insolvency proceedings 1264–1275
When meeting for classification, etc., to be called 1264
Period between call and holding of meeting for 1265
Statements to be prepared by trustees 1266, 1267
Proceedings at meeting for ..... 1269 et seq.
Objections to resolutions adopted at meeting for 1273, 1274, 1275
Of bankruptcy and discharge of bankrupt. (*See* Bankruptcy.)
Of credits in bankruptcy proceedings 1376–1379
Clerks and secretaries of courts; general provisions. 249, 250, 279, 280, 290, 315, 318, 412
Codicils. (*See* Wills.)
Commercial acts requiring peremptory judicial intervention 2123, 2135
Commercial books:
Are means of proof 577
Effects, deposit and examination of 2080, 2088
Companies. (*See* Corporations.)
Comparison:
Of public documents, who to make 598
What documents are valid without 597
Of handwriting 605, 608
When it may be requested 605
Who to make comparisons of 605, 608
What documents are to be considered genuine 607
Competency:
To hear personal, real, or mixed actions 62
And questions of jurisdiction 51, 125

Competency—Continued.
How determined when two or more judges in town 59
Questions of—
How raised 72, 80
Can not be raised—
By court 74
In closed proceedings 76
Who to hear and determine 80, 99, 111, 114, 115
Positive or negative—
Who can raise 116
Who to hear 117
Complaints:
In intervention, how to be heard, etc 487
And summons in actions of greater import 523–530
What to contain 523
To be referred to defendant 524
When to be considered answered 526
When second summons to be issued 527
When defendants to—
Be declared in default 527
Be considered party 529
Litigate jointly, etc 530
In actions of lesser import 680
When copies need not be attached to 683
In oral actions—
What to contain, etc 719
Service of, and citation to be entered on record 723
In executory actions 1437
Composition and respite in insolvency proceedings 1128–1153
Who may request, and when 1128
Meetings of creditors 1129–1130
Who to be cited to attend 1131
Executions may be consolidated with insolvency proceedings 1133
Exceptions 1134
Creditors may be represented by third person 1135
Number of creditors necessary to hold meeting 1136
How meeting to be held 1137
What creditors not required to attend meeting of creditors 1138
Wife of debtor can not take part in meeting 1139
When proposition for, to be considered rejected 1140
When proceedings to be closed 1141
Objection may be made to decision favorable to debtor 1142
Creditors not present—
To be notified of decision 1143
Must object at once 1144
Periods within which to file objections 1145, 1146
Causes for which agreements for, may be impugned 1147
How objection to be made 1148
Costs 1152
When debtor may be declared involuntary insolvent 1153
Compromise in proceedings before arbitrators:
Requisites of 791, 792
When to be presented to arbitrators 793
When of no effect 794

Compromise—Continued.
When to become null and void 799
In proceedings before amicable compounders:
What to contain 827
Legal effects of 828
Compulsory process:
More than one writ for, not to be allowed 309
(*See* Periods of time.)
Against litigants and their solicitors 8
For the recovery of records and instruments 308, 521
General provisions in executory actions 1479–1529
In commercial affairs 1542–1558
Against whom and where to be instituted 1542
Manner of proving claims 1543
Exceptions which may be pleaded 1549
How exceptions pleaded to be proven 1550
Evidence 1551–1554
When judgment to be rendered 1555
Taxation of costs 1555
Appeals 1556
Conciliations: Proceeding to secure. (*See* Proceedings to avoid litigation.)
Confession in court:
Is a means of proof 577
When litigants required to make statements under oath 578
Interrogatories to be in writing, etc 580, 581
Judge to set day for parties to appear to answer interrogatories 582
When judge to decide upon admission of questions 583
Answers must be affirmative or negative 585
When witness may refuse to answer 586
Testimony to be read to person giving it 588
Action to be taken when litigant unable to appear to answer 590
When litigant may be obliged to appear in court to give testimony 591
When nonappearance to be considered confession of judgment 592
Testimony in actions in which the State, etc., is interested 594
Consent of parents, etc., to contract marriage, substitution for 1918–1941
Consolidation:
Of actions 153–159
What actions may be consolidated 153
What actions can not be consolidated 154
When not permitted 157
Effect of 159
Of records of proceedings 160–187, 321, 1478
When to be ordered 160, 161
When to be requested 163
What records may be consolidated 164
What records can not be consolidated 165, 166
Constitution and attributes of the supreme court of Cuba ..... pages 432 et seq.
Constructions, summary proceedings relating to 1661–1683
Contencioso administrativo, appeals and remedies allowed 463
Copies:
Of instruments and documents and their purposes 514–522
To be attached to instrument, etc., in declaratory actions 514–515
Reference of, to opposite party or parties 516
Effect of omission of 517
Object of, etc 519–522

Corporations:
Associations and other judicial entities, who are to appear for in court 2
Civil and commercial, domicile of 66
Correspondence. (*See* Documents.)
Costs:
Duties and rights of solicitors with regard to 5, 7, 8
When fees of solicitors and attorneys not included in 11
In issues of poverty 31, 37–39
In questions of competency 108, 151
In challenges 211, 227, 228, 234
In compulsory process 309
In proceedings to avoid litigation 474
In abandoned actions 413, 414
When to be imposed as disciplinary corrections 449
In appeals 395
In proceedings to avoid litigation, who to pay 474
And expenses of witnesses 644
In oral actions, when plaintiff to pay 727
In the second instance of actions of lesser import 709
In proceedings in default 780, 781
In appeals for annulment of judgment 1765, 1769, 1782, 1783, 1792
Counter claims:
Judge competent in .... 63, No. 4
Answers, replications, and rejoinders 539, 548
When can not be filed 542
And exceptions to be heard, etc., at same time 543
In actions of lesser import 687–688
Courts:
When considered to have jurisdiction 53, 54
Can not raise questions of competency 76
Cross complaints. (*See* Counter claims.)
Cross interrogatories, when to be admitted, etc., in actions of greater import. 640
Curators. (*See* Tutors.)
Custody of persons 1879–1917
For whom custody may be ordered 1879
Of married woman .... 1880 et seq.
Of single woman .... 1900 et seq.
Of orphans .... 1914 et seq.
Deaf mutes, how to give their testimony 657
Death of litigant or solicitor permits suspension of hearing 323
Decision:
Granting or refusing declaration of poverty does not produce effects of *res judicata* 33
Judicial:
Orders, rulings, judgments, final judgments, *ejecutorias*, etc., manner and form in which to be rendered .... 251–253, 336, Nos. 6 and 7, 358–374
Remedies against those of—
Inferior judges 375–399
Audiencias 400–403
The Supreme Court 404, 405
Common provisions 406–409
Nullity of, rendered by intimidation or force 441

Declaration of poverty:
Of whom to be requested 21
Applicant for, must be at once defended as 27
In one action can not be used in another 35
Rights which it gives, etc 4, 13–50
Of insolvency. (*See* Insolvency.)
Of bankruptcy. (*See* Bankruptcy.)
Declaratory actions:
What are 480–481
Rules to determine proper action 482–495
What to be decided—
In declaratory actions of greater import 482
In, of lesser import 483
In oral actions 485
Preparatory proceedings 496–501
Presentation of documents 502–513
Copies of instruments, etc 514–522
Declinature ..... 72 et seq.
Defaults. (*See* Periods of time.)
When defendant in action of lesser import to be declared in 684
Defect, legal, is a dilatory exception 532
Defense as poor person, when not to be granted 17, 18
Demarcations. (*See* Surveys.)
Deposit and examination of commercial effects 2080–2088
Temporary, and attachment of the value of bills of exchange 2089–2091
Disagreements:
Manner of adjusting of justices 350–357
Who to attend to adjust 352
Who to set time for hearings to adjust 353
Discharge and abandonment of merchandise 2108–2121
Disciplinary corrections 436–458
Who has power to impose 436
Upon whom may be imposed 436, 439, 442, 444
Causes for which imposed 437
Penalty for not complying with order of expulsion 438
What corrections may be imposed 448
Appeals from 455
When department of public prosecution to be informed of 457
When to be imposed upon attorneys and solicitors 442
Of witnesses 439
Dispatch:
Hearing—
Voting upon and decision of judicial matters 313–357
Ordinary 313–334
Justices *ponentes* 335–337
(*See* Ponentes.)
When to be public 313
Dispensation with law 1979–1992
How proceedings for, to be instituted 1979
Evidence to be presented 1980
Distribution of business:
Among courts, etc 429–435
How to be done 429
Penalties for improper 433, 434
Actions not subject to 435

Division of estate. (*See* Testamentary and intestate proceedings.)
Documents:
To be attached to the first instrument 3
Acknowledgment of receipt of 250
To be attached to the complaint and answer 461, 502, 503, 504, 514, 515, 680
Presentation of 502–513
Copies of, etc 514–522
How presentation to be made 504
Can not be admitted after filing of complaint, etc 505, 506
Exceptions 505, 512, 693
After the period for taking evidence ..... 507 et seq.
Question as to authenticity, legality, or correctness of documents or copies thereof 510, 511
Provisions of articles 502–512 and 514–521 not applicable to oral actions .. 522
To be attached to applications for permission to prosecute, etc., as a poor person 28
Formal, public, private, and correspondence are means of proof 577
Public and formal—
What are 595
What is required to make them valid 596
What documents are valid without comparison 597
Comparison of, who to make 598
Executed in other countries, when valid 599
Translation to accompany documents in foreign language 600
Private—
Correspondence and books of merchants 601–604
To be attached to record of proceedings 601
When parties not compelled to exhibit 602
How to be acknowledged, etc 603
Commercial books employed as evidence 604
Comparison of handwriting of 605–608
Importing a confession of judgment 1427
Domicile:
Of civil and commercial corporations 66
Children under parental authority 64
Employees 67
Married women 64
Merchants 65
Minors and incapacitated persons 64
Soldiers, in active service 68
Drafts. (*See* Bills of exchange.)
Duties of solicitors:
After accepting power of attorney 5
While discharging 6
Ecclesiastical judges. (*See* Competency.)
Elucidation of a judgment 310, 362, 406
Employees, subordinate, of the supreme court of Cuba ..... page 437
Error, writ of. (*See* Appeal for annulment of judgment.)
Evidence:
Admission of, time within which to be taken, etc 549–576
Ruling ordering, to be taken can not be appealed from 550
Litigants may submit case, without taking of 551
Period for taking—
Divided into two parts 552

Evidence—Continued.
Can be suspended by reason of *force majeure* 553
Extraordinary period for taking..... 554, 555
What, required for extraordinary period to be granted..... 556
Provisions relating to extraordinary period 557, 558, 560
Ruling relating to extraordinary period may be appealed from for review only..... 559
When litigant to pay indemnity..... 561
Supplementary pleadings 562
To be given to opposite parties 563
What, to be confined to..... 564
When, may be rejected 565
Remedies against decisions relating to 566
Documentary, to be examined by the judge, etc..... 568
Proceedings for taking of, to be public..... 569
Judge to fix day for taking of 572
Parties may designate person to represent them at taking of..... 573
Separate records to be made 575
When proceedings for taking of, are null..... 576
Of witnesses 636–658
(*See* Witnesses.)
In actions of lesser import—
When judge to order taken 692
Period within which to take 695–697
How to be taken 698
In proceedings in default, when, of defendant to be received at second instance 766
In settlements by arbitrators—
When to be taken..... 807
Period for the admission of 809
In appeals 859, 861, 863–866, 896, 897
(*See* Appeals.)
In execution of judgments 936–940
(*See* Judgments, execution of.)
In executory actions..... 1467–1469
Examination:
Of books, papers, etc., how to be made 570
Classification, etc., of credits against bankrupts 1376–1379
And deposit of commercial effects 2080–2088
Exceptions:
Judges taking cognizance of an action have jurisdiction, etc., over..... 55
Dilatory 531–538
If pleaded by defendant, no answer required, etc 531
What are admissible as 532, 533
When to be pleaded..... 534
How to be pleaded 535
To be referred to plaintiff..... 536
What exceptions to be decided first, etc..... 537
Which can be pleaded in answer to complaint..... 541
And counterclaim to be heard at same time 543
Of *res judicata* to be heard separately 543
Which may be pleaded by defendant in action of lesser import..... 686
Which may be pleaded in executory actions 1462–1464
Execution of judgments. (*See* Judgments.)

Executory process 1427–1478
Executory action to be based on act importing confession of judgment... 1427
Instruments which import a confession of judgment 1427
Signature of private document to be acknowledged 1428, 1429
Citation of debtor 1430
When execution to issue 1431, 1438
Confession does not constitute an instrument importing confession of judgment 1432
For what execution can issue 1433, 1434
How value of debt to be computed 1434, 1435, 1436
Preparation of complaint 1437
Appeal from ruling denying execution 1439
Proceedings after execution has been issued 1440–1442
Deposit of amount claimed 1444
Order in which attachment to be levied 1445
Railways, etc., no attachment can be levied on 1446
Bed in daily use can not be attached 1447
Property exempted from attachment 1446, 1447
Attachment of salaries, pensions, etc 1448
Attachment of real property 1451
Creditor may select property 1452
When increase of attachment to be ordered 1453
Notice of sale to be served on debtor 1457
Manner of serving notice 1457–1458
Objection of debtor to execution 1459–1461
Exceptions which can be pleaded in executory action 1462–1464
Basis for request to vacate execution 1465
Objection to be referred to plaintiff 1466
Submission of evidence 1467–1469
Citation for judgment 1470
When judgment to be rendered 1471
Taxation of costs 1443, 1472, 1473
Appeal from judgment ..... 1474 et seq.
Judgment does not give rise to exception of *res judicata* 1477
Questions of competency 1478
Consolidation 1478
Expert:
Fees of 422, 426–428
Must have a diploma 614
Evidence of, is means of proof 577
Opinions 609–631
When expert testimony may be used 609
Number of experts to be fixed by person requesting 610
Term within which to agree upon 613
When judge to select 615
Challenged, not to be appointed 616
When they may be challenged 618
How challenge of, to be interposed 619
What are legitimate causes of challenge 620
Procedure after challenge presented 623
Challenging party, when to pay costs 624
To make their report in writing or orally 626
Explanations which may be requested of 627
How three experts to give their report 628

Expert—Continued.
When report of college, etc., may be requested by judge 630
How expert testimony to be considered 631
In insurance contracts 2136–2142
Extension of time 305–307
(*See* Periods of time.)
Extinction:
Of remedies 312, 407
Of actions 410–419
When an action is extinguished 410
When not extinguished 411
Judge to be informed of expiration of periods 412
At first instance 413
At second instance 414
Of first instance does not extinguish cause of action 418
Fees:
When attorneys may demand them of solicitors 12
Of attorneys and solicitors, etc., how to be fixed 422–426
Provisions relating to fees of attorneys 5, 10, 37, 39, 448
Of experts 422, 426–428
To be charged—
For celebrating a marriage in Cuba ..... page 441
By court officials, etc., in Porto Rico ..... page 504
Final judgments, what are called 369
Fines, disciplinary corrections, general and special provisions 212, 213, 228, 234, 263, 268, 280, 308, 438, 448, 818, 819
Fiscal and assistant fiscal of the supreme court of Cuba, duties of, etc ..... page 437
Foreigners, judge competent when they are defendants or plaintiffs 70
Form, breach of. (*See* Appeals for annulment of judgment.)
Friendship, cause of challenge, 189, No. 9.
Greater import. (*See* Actions of.)
Gross averages. (*See* Averages.)
Guardians. (*See* Tutors.)
Habeas corpus in Cuba:
Who may prosecute writ ..... page 475, I
Writ may issue on any day ..... page 475, I
Parties ..... page 475, I
How and to whom application for writ must be made ..... page 475, II
Contents of petition ..... page 476, III
When writ must be granted ..... page 476, IV
Penalty for refusing writ ..... page 476, IV
Form of writ ..... page 477, V
When writ sufficient ..... page 477, VI
When writ to issue without application ..... page 477, VII
Return, its contents ..... page 477, VIII
Time of returning writ ..... page 478, IX
Body of persons imprisoned or restrained to be produced ..... page 478, X
Proceedings on disobedience of writ ..... page 478, XI
Order to produce person imprisoned or restrained ..... page 479, XII
Proceedings on return of writ ..... page 479, XIII
When person imprisoned or restrained to be remanded ..... page 479, XIV
Proceedings on irregular commitment ..... page 479, XV
Bail, when and how ordered ..... page 479, XVI
When persons imprisoned or restrained may be committed to another officer ..... page 480, XVII

Habeas corpus in Cuba—Continued.
Custody of persons imprisoned or restrained pending proceedings ..... page 480, XVIII
Notice to be given before discharging person imprisoned or restrained ..... page 480, XIX
Person imprisoned or restrained may controvert return ..... page 480, XX
Proceedings on sickness of person imprisoned or restrained ..... page 480, XXI
Obedience to order to discharge, how enforced ..... page 481, XXII
When discharge a bar to reimprisonment ..... page 481, XXIII
Violation of last paragraph ..... page 481, XXIV
Transfer or concealment of person imprisoned or restrained to elude writ ..... page 481, XXV
Order when person restrained about to be carried out of island. page 482, XXVI
Arrest of the person detaining the persons restrained ..... page 482, XXVII
Proceeding where a writ is refused by judge of instrucción .. page 482, XXVIII
When subsequent writ may issue ..... page 482, XXIX
Penalty for refusing copy of process ..... page 483, XXX
Repealing paragraph ..... page 483, XXXI
When this order takes effect ..... page 483, XXXII
Handwriting. (*See* Comparison of.)
Hearings of actions and issues:
Public and behind closed doors 313, 314
When to be held 323
Ordinary and dispatch 313
How to be set 321
When may be suspended 323, 324
How to begin 330
Duties of justice presiding at 333
Where to be entered 334
Judgments and final pleadings 666–678
When public hearing may be requested 667
Action of judge when refusing to grant public 675
(*See* Pleadings).
In oral actions ..... 718 et seq.
In proceedings in default of defendant ..... 772 et seq.
Heirs of solicitors, rights of 8
Holidays, what are to be considered legal in Cuba ..... page 465
Hombre bueno, when to act 469
Illness of attorney, ground for suspension of hearing 323
Incapacitated persons, who are to appear for, in actions 2
Incidental issues:
Judges taking cognizance of an action have jurisdiction over, raised therein. 55
How to be heard, etc 740, 743, 745
Requisites in order to be classified as 741
When separate record required for 745
What to contain, etc 746
At whose expense to be made 746
To be referred to opposite party 748
Parties may request evidence to be taken 751
When evidence to be taken 751
Period for the taking of 752, 753
When judgment to be rendered 757
Appeal from judgment on 757
Petition for rehearing allowed 759
Remedy against decision of audiencia or supreme court on 760

Inhibitions (*see* Compentency, questions of):
Pleas of, to be interposed in writing, etc 8
Stays all proceedings until competency decided 11
Injunction: 1662.
(*See* Summary proceedings, etc.)
Insolvency proceedings:
Composition and respite. (*See* Composition.)
Declarations of insolvency 1154–1170
May be voluntary or involuntary 1154
Requisites of petition of voluntary insolvent 1155
Declaration of voluntary insolvency, when to be made 1156
Proof required of creditor requesting declaration of 1157
When judge to declare insolvency 1158
Objection of debtor to declaration 1160–1164, 1168, 1169
Action if declaration is vacated 1165
When debtor may demand indemnification of losses and damages 1167
Effects of declaration of insolvency 1170
Proceedings consequent upon a declaration of insolvency 1171–1190
What proceedings to be ordered in declaration of insolvency 1171
Mode of seizing and attaching property 1172
Rules for deposit of property 1173
Detention of correspondence 1174–1176
Appointment of depositary administrator 1177
Representation of depositary administrator 1179
Collection of debts by administrator 1180
Deposit of money collected 1181
Allowance and fees of depositary 1182
Rules for consolidation of executions to proceedings 1183
Actions which may be consolidated to 1185
Call of insolvent when absent 1190
Citation of creditors and appointment of trustees 1191–1225
How citation to be made 1192–1295
Personal citations 1196, 1197
Appearance of creditors 1198, 1199, 1200
List of creditors to be made 1205–1206
Appointment of trustees 1207–1211
Action in case of death of trustee 1212, 1224
Who can be trustees 1213
Meeting for election of trustees 1214
When trustees to take possession of office 1215
Duties of trustees 1216
Remuneration of trustees 1217
Objection to election of trustees 1218–1220
Objection to trustees does not suspend proceedings 1222
When trustees to be removed 1223
Administration of the estate of the insolvent 1226–1246
(*See* Administration.)
Delay and its effects 1276–1283
Acknowledgment and classification of credits. (*See* Acknowledgment, classification.)
Payment of credits 1284–1292
Classification of insolvency proceedings 1293–1300
Settlements between creditors and the insolvent. (*See* Settlement.)

Insolvency proceedings—Continued.
Maintenance of the insolvent 1312–1315
Judge to fix amount of allowance 1312
When creditor to receive allowance 1315
Inspection, judicial. (*See* Judicial.)
Instruments importing a confession of judgment 1427
Insurance contracts: Appointment of arbitrators and experts in 2136–2142
Interdiction: Judge competent in proceedings ..... 482 and 63, rule 1
Interpreters: When to be used 656
Interrogatories:
To be in writing, etc 580, 581
Judge to set day for parties to appear to answer 582
When judge to decide upon admission of questions 583
Answers must be affirmative or negative 585
Intervention:
Complaints in. (*See* Complaints.)
Of ownership, etc., in oral actions, when municipal judge to decide 738
In executory actions 1530, 1541
Basis for 1530
When to be interposed 1531
Do not suspend proceedings 1532
Second intervention is not allowed 1536
Intestate and testamentary proceedings of soldiers, etc., preliminary steps 52
Proceedings, judge competent in No. 5 63
Intestate proceedings 958–1034
Provisional measures 958–975
How to be commenced 958
What required in order to institute 959
Who to advise authorities of death of principal 962
Investigations to be made by judge 964
Action if intestate has no relatives, etc 965
Administrator appointed to furnish security 966
Correspondence to be opened by judge, etc 968
Money and jewelry to be deposited 967
Property, etc., to be transferred to judge of first instance by municipal judge 969
When *promotor fiscal* to take part in proceedings 971
Who may institute 972
Facts to be proven by persons requesting institution of 973
Surviving spouse to be appointed administrator 975
Designation of heirs *ab intestato* 976–999
When to be proceeded with 976–977
Rights of heirs who are descendants of deceased 978
When judge to make 980
Rights of ascendants 981
Collateral relatives 982
Action to be taken when presumption of other relatives 983
Proceedings when there is only one claimant, etc 988, 989
When there is a disagreement between two claimants 990, 991
Action when taking of evidence requested 992
Evidence taken to be attached to record 993
When judgment to be rendered 994
When parties claiming right to estate may appear 996
Action when no claimant appears 997

Intestate proceedings—Continued.
Designation of heirs *ab intestato*—Continued.
When succession to be declared vacant 998
Property to be turned over to State when succession vacant 999
Proceedings after designation of heirs 1000–1003
Actions which may be consolidated to 1002
Who may request consolidation 1003
Administration of intestate successions 1004–1034
Administration record, what to contain 1004
Who to keep 1005
Administrator, what to represent and duties of 1007
Bond of 1008
When to render accounts 1009
Where accounts of, to be kept 1010
When final account to be rendered 1011
When judge to approve account, etc 1013
To keep property in repair 1015
Costs and payment for repairs 1016–1018
Payment of taxes 1018
Crops may be sold by 1019
May lease dwelling houses 1020
What property to be leased at public auction 1021
Provisions relating to said auctions 1022–1027, 1031
Property which need not be leased 1028
Can not be sold during proceedings, etc 1029
Judge may order sale of property 1030
Compensation of administrator 1032
Assistants of administrator 1033–1034
Inventories in testate successions. (*See* Testamentary proceedings.)
Investiture of power to appear in court 1993–2000
When it can be granted 1994
When power granted ceases 2000
Involuntary insolvency proceedings. (*See* Insolvency proceedings.)
Instancia: Defined—footnote, page 3.
Judges—
Of competent jurisdiction. (*See* Competency; Actions; Jurisdiction.)
And courts, when considered to have jurisdiction 53, 54
Impliedly or expressly agreed upon, competent to hear action 56
Of first instance to personally examine causes, etc., before rendering decisions 318
Can not postpone questions discussed in an action 360
Exceptions 361
May elucidate obscure points in judgments 362
Competent in—
Real, personal, and mixed actions 56–62
Actions relating to civil status ..... 63, No. 1
Actions involving the rendition, etc., of accounts ..... 63, No. 2
Actions upon guaranties ..... 63, No. 3
Counter claims ..... 63, No. 4
Testamentary and intestate proceedings ..... 63, No. 5
Proceedings relating to inheritances ..... 63, No. 7
Bankruptcy proceedings ..... 63, Nos. 8, 9
Challenges and appeals against decisions of arbitrators ..... 63, Nos. 10, 11
Cautionary attachments ..... 63, No. 12
Actions of unlawful detainer of redemption ..... 63, No. 13

Judges—Continued.
Competent in—Continued.
Summary proceedings relating to property ..... 63, Nos. 14, 15
Proceedings for adoption and arrogation ..... 63, No. 16
Proceedings relating to guardianship ..... 63, Nos. 17–19
Proceedings for the custody of persons ..... 63, No. 20
Proceedings for maintenance ..... 63, No. 21
Proceedings for the reduction of will to written instruments ..... 63, No. 22
Proceedings relating to the sale of property of minors, etc ..... 63, No. 23
Proceedings for administration of property of an absentee ..... 63, No. 24
Proceedings to dispense with the law ..... 63, No. 25
Proceedings to perpetuate testimony ..... 63, No. 26
Proceedings for surveying and partition of *foros* ..... 63, No. 27
Rules of competency of articles 56 to 60 are understood without prejudice to provisions of 71
Judgments:
Elucidation of 310, 362, 406
Final, defined 369
Can not be changed after being signed 362
Must be clear 358
Who to draft 263–364
Who to sign 366
Final—
How to be drafted 371
When to be issued 374
Transcripts of. (*See* Transcripts.)
When parties to be cited for, in actions of greater import 676
When final, rendered in default may be executed, etc 786
Hearings against final, rendered in default in oral actions, when to be granted 784
By arbitrators:
When parties to be cited for 812
What to include 814
How to be rendered, etc 815
By amicable compounders:
How to be rendered 834
Remedy against 835
When to be final 836
Execution of 837–838
On appeals 849, 852, 872, 873, 885, 895
Execution of 918–957
Rendered by Spanish courts and judges 918–949
When and how execution to be proceeded with 918
Proceedings in case of appeal 919
When attachment of property to be ordered 920
Appraisement and sale of property 921
Action when execution can not be enforced at once 922
Ordering something to be done, etc 922–924
Ordering delivery of real estate 925
Ordering payment of money 926
Ordering payment of losses and damages 927–930
Ordering payment of an uncertain sum 931
When evidence to be taken 936
Period for taking of evidence 937
What evidence to be limited to 938

Judgments—Continued.
Execution of—Continued.
Rendered by Spanish courts and judges—Continued.
When and how execution to be proceeded with—Continued.
What evidence to be rejected 938
Provisions relating to evidence 939, 940
When judge to render decision 941
Execution of ruling may be ordered 942
Appeals to be admitted for review only 948
Costs to be taxed against judgment debtor 949
Rendered by foreign courts 950–957
Force of 950–953
Who to request execution of 954
Period within which party to appear 956
Action if execution ordered or denied 957
Rendered in actions of unlawful detainer 1593–1606
Who to execute 1593
When execution of judgment to be proceeded with 1594, 1595
Judicial entities, who are to appear for 2
Judicial proceedings:
And periods of time 248–312
In general 248–255
(*See* Legal working days; Notifications; Citations; Summonses, and Requisitions.)
Judicial acts performed under intimidation or force are null 441
Judicial inspection:
Is means of proof 577
When and how to be made 632
Parties, etc., may attend 633
To be held simultaneously with expert examination 634
Witnesses may be examined at 635
Judicial possession: In cases in which summary proceedings to acquire possession do not lie 2055–2059
Judicial intervention in commercial acts 2132–2135
Jurisdiction:
Contentions: Defined—footnote, page 1.
Voluntary: Defined 1810
When courts are considered to have 53, 54
Questions of 51–124
Rules to determine competency 56–71
General provisions 51–55
Questions of competency 72–124
Lack of, is a dilatory exception 532
Justice:
Proceedings for furtherance of 340–342
Associate: Transferred, etc., must vote in judgments, etc 346
Disabled: When to vote 347
Law, appeal for annulment of judgment for violation of. (*See* Appeals.)
Legal aid to the poor 13–50
Legal working days and hours 256–259
Legal defect: Is a dilatory exception 532
Legal doctrine: Appeal for annulment of judgment by reason of breach of. (*See* Appeals.)
Lesser import: Actions of, parties may appear in person in 4
(*See* Actions of.)

Letters requisitorial:
Letters rogatory, letters mandatory, and mandates 284–300
When to be used 285
(*See* Letters rogatory.)
Letters rogatory, etc.:
How to be received 290
To whom to be delivered 291
Person requesting, to furnish stamped paper, etc 292–294
Action to be taken by judge unable to personally execute, etc 296
Bearer of, not to be informed of orders issued 298
Steps to be taken when execution of, delayed 299
Manner in which service of summons is to be made in foreign country ... 300
Liquidation of gross averages, classification, etc 2092–2107
Litigants, solicitors, and attorneys 1–12
May submit case for judgment without taking of evidence 551
Litigation, actions to avoid, parties may appear in person in 4
Live stock, temporary seizure of 1407
Maintenance:
Temporary 1607–1615
Documentary evidence of right thereto must be presented by applicant for. 1607
Citation of parties for oral suit 1609
When oral hearing to take place 1610
When judgment to be rendered 1612
Appeal 1613
Judgment rendered does not give rise to exception of *res judicata* 1615
Mandates, when to be used 288
(*See* Letters requisitorial, etc.)
Marriage, in Cuba ..... pages 441, 466, 473
Married woman, domicile of 64
Merchandise:
Deposit and examination of 2080–2088
Abandonment, discharge, and intervention of, etc 2108–2121
Sale and mortgage of, and repair of vessels 2122
Merchants, domicile of 65
Minors and incapacitated persons:
Domicile of 64
Provisions relating to ..... 2, 63 (Nos. 16–19, 23), 64, 459
Alienation, etc., of property of 2010–2029
Mixed actions. (*See* Actions.)
Months, how to be counted 305
Mortgage of property of minors. (*See* Alienation.)
And sale of merchandise and repair of vessels 2122
Municipal judges:
Challenge of 218–233
When to be interposed 218
When to be allowed, etc 219
Who to substitute challenged 220
Remedy against decision disallowing 223
When and how appeal to be taken 224
When decision on, becomes final 225
Costs, who to pay 227, 228
Provisions relating to municipal judges ..... 63, Nos. 5, 12, 20; 435, 436 et seq., 452, 455, 462, 480
Only judge competent in oral actions 714
Action to be taken by, when considered incompetent 714

Municipalities: By whom represented 2
Necessary testamentary proceedings. (*See* Testamentary proceedings.)
Notifications, etc 260–280
Of rulings, etc.—
When to be given 260
By whom to be served 262
By whom to be signed 263
Where to be served 264–266
Writ of—
Requisites 267
To whom to be delivered 268–269
Service of, in court room 281–283
Oath:
When not to be administered to witness 647
Administration of to—
Experts 626
The parties 496, 578
Oaths of office of officials of the supreme court of Cuba ..... page 438
Obligations, collection and enforcement of, in Cuba ..... page 442 et seq.
Oral actions. (*See* Actions.)
Order:
For proceeding in a matter, when to be made 316
Of mere practice—their denomination, form, notification, remedies against, etc 251–253, 281, 282, 298, 316, 317, 368, 369, 374–376, 400, 404, 407, 441, 820, 1817
Ordinances are considered public documents 595
Organization of the supreme court of Cuba ..... page 431
Orphans. (*See* Custody.)
Parties: When they may appear in person 4
Partition of estates. (*See* Testamentary and intestate proceedings.)
Pendency of another action is a dilatory exception 532
Periods of time:
Judicial, compulsory process and defaults 301–312
Within which to notify judicial decisions 260, 301–312, 319–406
Which can be extended 306–309
Which can not be extended 310–312
In rehearings 375, 376
For appeals, five days 381, 406
Suspended to render decision 342, 361
Within which to request elucidation of judgment 363
In appeals from decisions rendered at rehearings 379
Within which to request copies of judgments appealed from for review only 391
To perfect an appeal 391–393
To request that an appeal be not admitted both for stay and review of proceedings 394
To interpose remedy of complaint on account of denial of appeal 397, 398
Request for elucidation of judgment interrupts the period within which to appeal 406
Expiration of, within which to appeal, effect 407
For summons, in actions of greater import 524, 525, 527, 529
To answer 529, 538, 540
To plead dilatory exceptions 534
To object to dilatory exceptions 536

Periods of time—Continued.
For replications 545
Ordinary and extraordinary for evidence 552–555, 560–567
In which to request an extraordinary period 556
To object to said request 558
To request a reconsideration of an order refusing some proceeding for the taking of evidence 567
For expert evidence 611, 613, 619
For evidence of witnesses 639, 660, 662, 664
To request a hearing 667
To impugn a request for a hearing 674
For final pleadings, etc 668, 675
To appear before a superior court in appeal from a final judgment 678
In actions of lesser import—
For defendant to make answer 682
For appearance when summons served by edicts 682
Within which to order evidence taken 692
Within which to take evidence 695–697
In oral actions 725, 731, 737
In incidental issues—
For taking evidence 752, 753
For appearance before the supreme court and other courts of Cuba 464
Perpetuation of testimony 2001–2009
Personal actions. (*See* Actions.)
Personality:
Lack of, in plaintiff and solicitor, is dilatory exception 532
Lack of, in defendant 532
Personal property, provisional seizure of 1407
Persons, custody of. (*See* Custody.)
Petitions:
Must bear signature of attorney 10
Exceptions to above 10
For declaration of poverty, requisites of 28
Incidental to hearings 334
Pleadings:
Supplementary 562
To be given to opposite party 563
Final, hearings and judgments 666–678
Period within which to make 668
What to be confined to 669
To be attached to record 670
When not to be made 675
Ponente justices: Their duties, etc 251, 254, 335–337, 344, 345, 364, 401, 870
Poor persons:
Privileges enjoyed by 14
What persons can be declared 15
Applicant for permission to prosecute or defend as, to be defended as, at once 27
Attorney and solicitor to be assigned to 27
Costs to be paid by 39
When fortune of, considered to have improved 39
May utilize services of solicitor and attorney appointed by himself 40
Porto Rico: For changes in procedure, etc. (*See* Appendix II, page 485.)

Possession: Summary proceedings to acquire. (*See* Summary proceedings.)
Judicial, in cases in which summary proceedings to acquire possession do not lie 2055–2059
Poverty:
Declaration of, of whom to be requested 21
Action can not be commenced until issue of, decided 22
Of litigants, how computed 16–18
Requisites for petition for declaration of 28
Applicant for declaration of, must be at once defended as such 27
Power of attorney:
Acceptance of by solicitor, when presumed 5
Must be attached to documents 3
Revocation of 9
Preparatory proceedings in declaratory actions 496–501
Prescription: When interrupted by proceedings to secure a conciliation 479
Presentation of documents in declaratory actions 502–513
Presiding judge of the supreme court of Cuba, duties of, etc ..... page 435
Presumption of acceptance of power of attorney by solicitor 5
Principal, death of, court to be informed of, by solicitor 9
Priority of officials of the supreme court of Cuba ..... page 438
Proceedings:
For adoption or arrogation, judge competent in, No. 16 63
For custody of persons, judge competent in, No. 20 63
For maintenance, judge competent, No. 21 63
For administration of property of absentee, judge competent, No. 24 63
For surveying, judge competent in, No. 27 63
To perpetuate testimony, judge competent in, No. 26 63
To dispense with the law, judge competent in, No. 25 63
Summary, to acquire possession, judge competent in 63
To retain possession, No. 15 63
Of voluntary jurisdiction do not require signature of attorney 10
When solicitors or attorneys may attend 11
Bankruptcy, instituted by creditors, judge competent in ..... 63, No. 9
Of voluntary bankruptcy, judge competent in ..... 63, No. 9
To avoid litigation:
Do not require signature of attorney 10
Provisions relating to 4, 459–479, 502
When to be instituted 459
When not necessary 460
Judges competent in 462
How to be held 470
When appearance of parties to be considered attempt at conciliation 463
Who to serve summons in 466
Absentees, how to be summoned in 467
Records of, where to be entered 471
Costs in, who to pay 474
Who to enforce agreements reached at 475
When action for annulment of agreement reached at may be brought 476
Statements of, to be made semiannually 479
Preparatory, in declaratory proceedings 496–501
For taking evidence. (*See* Evidence.)
In default 761–788
Personal property—
To be seized, etc., when 761
To remain in hands of possessor 762

Proceedings—Continued.
In default—Continued.
How real property to be attached 763
How long seizure or attachment to continue 764
Party in default always to be admitted as party to action 765
When evidence of defendant to be received 766
When petition that seizure be raised admissible 767
How to be heard 767
Service of notice of judgment upon defendant 768, 769
When litigant in default may appeal, etc 770, 771
When hearing against final judgment may be granted 772, 773, 775, 776, 778, 779
How petition for hearing to be determined 777
Payment of costs if hearing refused 780
Action when hearing granted 781
Payment of costs if hearing granted 781
How hearings against judgments to be held 782
When nolle prosequi to be entered 783
Hearings against final judgments in oral actions 784
When final judgments to be executed 786
Hearing of litigant in default, when can not be granted 788
In bankruptcy. (*See* Bankruptcy.)
To dispense with the law 1979–1992
(*See* Dispensation with law.)
To perpetuate testimony 2001–2009
Process, executory and compulsory. (*See* Executory process and Compulsory process; Interventions.)
Prohibition. (*See* Inhibition.)
Proof:
Means of ..... 577 et seq.
Admissible in settlements by arbitrators 810
Property:
Summary proceedings relating to. (*See* Summary proceedings of minors and incapacitated persons; *see* Alienation of absentees, administration of, 2030–2046.)
Prosecution or defense as poor person, when not to be granted 17, 18
Providencias. (*See* Orders.)
Provisional seizures. (*See* Seizures.)
Qualifications and requirements for appointment to office in the supreme court of Cuba ..... page 439
Real actions. (*See* Actions.)
Real property, provisional attachment of 1407
Record:
Of proceedings to avoid litigation, where to be entered 471
Books are public documents 595
Of certificates of births, etc., are considered public documents 595
Of proceedings in actions of greater import, when to be considered closed. 672
Recusation. (*See* Challenge.)
Redemption:
Actions for, judge competent in ..... 63, No. 13
Requisites for institution of action 1616
Period allowed for institution of action 1617, 1618
Concealment of sale, when considered malicious 1619
When evidence to be taken 1624
Appeal from judgment rendered 1625

Rehearings 376, 377, 379, 380
Relationship, cause of challenge ..... 189, No. 1
Relator: Defined—footnote, page 29.
Remedies against:
Civil, against actions of ecclesiastical authorities. (*See* Applications.)
Judicial decisions and their effect 375–409
Decisions of judges of first instance 375–399
Against orders of mere practice ..... 375 et seq.
Against final judgments and issues 381
Against rulings 376–380
How appeals from may be allowed 382–386
When ruling appealed from to be suspended 387
When jurisdiction to be suspended 388, 389
When execution of judgment not to be suspended 390
Remedy of complaint against decision disallowing appeal 397–799
Resolutions of audiencias 400–403, 406–409
Orders of mere practice 400
Judgments and rulings 401
Final judgments, etc 402, 403
Decisions of the Supreme Court 404–405, 406–409
Decisions relating to evidence 566
Against orders of arbitrators 820
Of civil liability against judges, etc 902–917
(*See* Civil liability.)
Remedy of complaint:
Against administrative authorities 116–124
When to be sought 119
Replication:
Answers, counterclaims, and rejoinders 539–548
To be referred to defendant 545
May be waived 546
And rejoinder what to contain 547, 548
(*See* Answer; Counterclaim.)
Requisitions, how to be served 275
Res judicata:
Effects of, not produced by decision on application for declaration of poverty 33
Exception of, to be heard as separate issue 543
Reservation of actions 358
Respite in insolvency proceedings. (*See* Composition and respite.)
Retroaction of bankruptcy proceedings. (*See* Bankruptcy.)
Rulings (*Autos.*):
What judicial decisions are called, their form, discussion, remedies against, etc 251–253, 281–283, 336, 346–348, 368, 370, 375, 376, 381, 383, 401–403, 406, 407, 441
(*See* Decisions, judicial.)
Ordering evidence to be taken, can not be appealed from 550
Salaries:
Attachment of 1448
Of officials of the supreme court of Cuba ..... page 438
Sale of property of minors, etc. (*see* Alienation):
And mortgage of merchandise and repair of vessels 2122
Sealed wills. (*See* Wills.)
[illegible] instance. (*See* Appeals.)

Secretaries:
Of courts. (*See* Clerks.)
Of the supreme court of Cuba, duties, etc..... page 436
Security of property in litigation 1417–1426
When judicial intervention in administration of property may be requested. 1417
Appointment of receiver..... 1418–1420
Seizure—
Of personal property of litigant declared in default 761
How long to continue in force..... 764
Provisional 1395–1416
Who to order 1395–1396
When permissible..... 1397
What necessary to order..... 1398
Petitioner to furnish security for damages, etc..... 1400
Seizure not to be made when security furnished..... 1403
Order to be observed in making attachment..... 1405
Action when real property to be attached..... 1407
personal property or live stock..... 1407
Debtor may object after provisional seizure levied 1414
In Cuba. (*See* page 469 for amendments.)
Settlements—
By amicable compounders or arbitrators.
(*See* Arbitrators; Amicable compounders.)
Between creditors and the insolvent..... 1301–1311
When settlements may be made..... 1301
Requisites of petitions for..... 1302
When settlement can not be made..... 1303
Meeting of creditors to arrive at..... 1306–1309
Provisions relating to composition etc., apply 1310
Between creditors and a bankrupt. (*See* Bankruptcy.)
Signature of attorney, full and surname 10, 251, 252, 253
Solicitors:
Attorneys and litigants 1–12
When their intervention necessary 3, 4, 10, 11
When to cease representing their principals..... 9
Principal to be notified of death of..... 9
Duties of, after accepting power of attorney 5, 6
Accounts of, when to be presented..... 8
Heirs of, their rights..... 8
Who may be substituted for..... 4
To be assigned to poor persons 27
Hear and sign notifications, citations, summonses, and requisitions .. 6, 265, 270
In Cuba—
Intervention of not obligatory, fees of, etc ..... page 467 et seq.
Stamped paper:
When to be used..... 248
De oficio, when to be used..... 248
Statements of proceedings to avoid litigation, to be made semiannually 479
Submission to jurisdiction of court:
Express 57
Implied 58
For first instance..... 60
For second instance..... 60
Submission, express or implied, for first instance; also for second instance ... 60

Inhibitions (*see* Compentency, questions of):
Pleas of, to be interposed in writing, etc 1
Stays all proceedings until competency decided 11
Injunction: 1662.
(*See* Summary proceedings, etc.)
Insolvency proceedings:
Composition and respite. (*See* Composition.)
Declarations of insolvency 1154–11
May be voluntary or involuntary 11
Requisites of petition of voluntary insolvent 11
Declaration of voluntary insolvency, when to be made 11
Proof required of creditor requesting declaration of 11
When judge to declare insolvency 11
Objection of debtor to declaration 1160–1164, 1168, 11
Action if declaration is vacated 11
When debtor may demand indemnification of losses and damages 11
Effects of declaration of insolvency 11
Proceedings consequent upon a declaration of insolvency 1171–11
What proceedings to be ordered in declaration of insolvency 11
Mode of seizing and attaching property 11
Rules for deposit of property 11
Detention of correspondence 1174–11
Appointment of depositary administrator 11
Representation of depositary administrator 11
Collection of debts by administrator 11
Deposit of money collected 11
Allowance and fees of depositary 11
Rules for consolidation of executions to proceedings 11
Actions which may be consolidated to 11
Call of insolvent when absent 11
Citation of creditors and appointment of trustees 1191–12
How citation to be made 1192–12
Personal citations 1196, 11
Appearance of creditors 1198, 1199, 12
List of creditors to be made 1205–12
Appointment of trustees 1207–12
Action in case of death of trustee 1212, 12
Who can be trustees 12
Meeting for election of trustees 12
When trustees to take possession of office 12
Duties of trustees 12
Remuneration of trustees 12
Objection to election of trustees 1218–12
Objection to trustees does not suspend proceedings 12
When trustees to be removed 12
Administration of the estate of the insolvent 1226–1246
(*See* Administration.)
Delay and its effects 1276–1283
Acknowledgment and classification of credits. (*See* Acknowledgment, classification.)
Payment of credits 1284–12
Classification of insolvency proceedings 1293–13
Settlements between creditors and the insolvent. (*See* Settlement.)

Supreme court of Cuba—Continued.
Deputy clerks ..... page 437
Fiscal and assistant *fiscals* ..... page 437
Subordinate employees ..... page 437
Appointment, term of office, priority, possession of office, oaths of office, and salaries of officials ..... page 438
Qualifications and requirements for appointment to office in ..... page 439
Surveys and demarcations 2060–2069
Who may request 2060
Proceedings for, can not be suspended, when 2063–2069
Taxation of costs 420–428
In applications for permission to prosecute, etc., as poor person 31, 32
In challenges of municipal judges 227, 228
In challenges of subordinate officials 245
How to be made 421
How to be enforced 420
Fees of attorneys, etc., how to be fixed 422
Fees which are not to be included in 423
To be submitted to each party for examination 425
Procedure in case of objection to amount 426–428
In executory actions 1443
In actions of unlawful detainer 1580
In summary proceedings relating to property 1646, 1659
Temporary attachment. (*See* Seizure.)
Term of office of officials of the supreme court of Cuba 438
Testamentary proceedings of soldiers, etc.:
Preliminary steps 52
Judge competent in (number 5, 6, and art. 52) 63
Testamentary proceedings 1035–1099
May be voluntary or necessary 1035
When voluntary 1036
Legitimate parties may institute; who are 1037
Who can not institute voluntary 1038, 1039
When called necessary 1040
Who may institute proceedings in necessary 1041
When necessary, can not be instituted 1043
Rules laid down by testator for inventory, etc., to be respected 1045
Voluntary, may be terminated at will 1046
When necessary, may be closed 1047
Extra judicial partitions, etc., to be judicially approved 1048
Partitions made by testators excepted 1049
Rights reserved to minors, etc 1050
Heirs not debarred from exercising right to deliberate, etc 1051
Estates may be declared insolvent or in bankruptcy 1052
Voluntary 1053–1092
Proof of death must be presented 1053
When petition for institution of, to be ratified 1054
When proceedings to be considered instituted 1054
How citation to be made and tutor, etc., appointed 1055
When curator ad litem to be appointed 1056
Who to be cited personally 1057
By edicts 1057
Promotor fiscal to be cited 1058
When representation of promotor fiscal to cease 1059
When judicial supervision of estate to be ordered ..... 1060, 106[illegible]

Testamentary proceedings—Continued.
Voluntary—Continued.
Who to make judicial inventory 1063
When judicial inventory to be made 1064
Who to be cited for making of inventory 1064
What inventory to contain 1065
Special inventory to be made 1066
Action of judge when agreement for administration of estate can not be reached 1068
Auditors to be appointed, when and how many 1069
Agreement upon experts to be employed 1070
Proceedings when no agreement can be reached on auditor 1072
When auditors to submit report of partition 1075
How report of partition to be prepared 1076
How questions disputed between auditors to be decided 1081
When judge to approve partition 1082
Proceedings upon objections to statement of partition 1085
When property adjudged to be delivered 1091
Creditors to be paid in full before delivery of property 1092
Necessary 1093–1094
When to be instituted 1093
Procedure in 1094
Administrations of testate successions 1095–1099
Dispositions of testator to be observed 1095
Action if testator has not made disposition as to 1096
Testaments. (*See* Wills.)
Testimony of experts. (*See* Experts.)
To be read to witness giving 650
Perpetuation of 2001–2009
Towns, their representation 2
Transcripts of judgments, form for 373
Defined 368
Are considered public documents 595
Translation to accompany documents in foreign languages 600
Trustees in insolvency proceedings, appointment of 1191–1225
(*See* Insolvency proceedings.)
Tutors and curators:
Designation and appointment of 1832–1878
Designation of tutors 1832–1839
Appointment of curators *ad bona* 1840–1845
For incapaciated persons 1846–1850
Designation of curators *ad litem* 1851–1859
Appointment to the office of tutor or curator 1860–1871
Common provisions 1872–1878
Unlawful detainer, action of, judge competent in ..... 63, No. 13
Verbal wills. (*See* Wills.)
Verification of public documents. (*See* Comparison.)
Vessels, repair of 2122
Voluntary jurisdiction:
General provisions 1810–1823
What are 1810
All days and hours legal 1811
When promotor fiscal to be heard in proceedings 1814
Admission of documents 1815
Change and modification of orders 1817

Voluntary jurisdiction—Continued.
Appeals 1818–1821
(*See* Adoption and arrogation; Tutors and curators; Custody of persons; Wills; Proceedings to dispense with the law, etc.)
Voluntary testamentary proceedings. (*See* Testamentary proceedings.)
Insolvency proceedings. (*See* Insolvency proceedings.)
Votes—
And decisions in actions 338–349, 365–367
And discussion for judgments, etc., to be behind closed doors 343
Three concurring, necessary for rendition of judgments 348
In rulings 348
Justices, transferred, etc., must vote 346–347
Reserved 366, 367
Of justices of courts in Cuba ..... page 440
Wills and codicils:
Verbal, manner of elevating to public instrument 1942–1954
How it may be effected 1942
Who are considered legitimate parties 1943
Notes, etc., to be presented with petition 1944
Order for witnesses to appear 1945
Appearance of witnesses, etc ..... 1946 et seq.
How witnesses to be examined 1948
Sealed, opening of 1955–1978
When to be presented to judge 1955
Witnesses:
In notifications 263, 268
Manner of citing 273
Disciplinary correction of 439
Depositions before the admission of evidence 501, 544
In actions of greater import:
Evidence of, when it can not be submitted 636
Questions to be admitted and rejected 638
Lists of, to be submitted 639
Presentation of cross interrogatories 640
How to be presented 640
When judge to set day for examination of 641
When to be cited to appear by subpœna 642
Rights of, who are compelled to appear 643
Number who may be presented 644
Costs and expenses of 644
How to be examined 645
When oath not to be administered to 646
Questions to be asked of 647
To read their own testimony, etc 650
Action to be taken when witness to be examined elsewhere 655
When interpreter to be used in examination of 656
When deaf mutes may be admitted as 657
How evidence of, to be considered 658
Challenge of, in actions of greater import 659–665
For what reasons witnesses may be challenged 659
Time within which to interpose 660
Proof of, to be presented 661
When objection may be made 662
When evidence relating to, to be presented 364

Woman, custody of. (*See* Custody.)
Writ of error. (*See* Appeal for annulment of judgment.)
Writ of—
Summons, requisites of 274
Citation, requisites of 272
Notification 267

O

OCT 30 1930

Evidence—Continued.
Can be suspended by reason of *force majeure* 553
Extraordinary period for taking..... 554, 555
What, required for extraordinary period to be granted..... 556
Provisions relating to extraordinary period 557, 558, 560
Ruling relating to extraordinary period may be appealed from for review only..... 559
When litigant to pay indemnity..... 561
Supplementary pleadings 562
To be given to opposite parties 563
What, to be confined to..... 564
When, may be rejected 565
Remedies against decisions relating to 566
Documentary, to be examined by the judge, etc..... 568
Proceedings for taking of, to be public..... 569
Judge to fix day for taking of 572
Parties may designate person to represent them at taking of..... 573
Separate records to be made 575
When proceedings for taking of, are null..... 576
Of witnesses 636–658
(*See* Witnesses.)
In actions of lesser import—
When judge to order taken 692
Period within which to take 695–697
How to be taken 698
In proceedings in default, when, of defendant to be received at second instance 766
In settlements by arbitrators—
When to be taken..... 807
Period for the admission of 809
In appeals 859, 861, 863–866, 896, 897
(*See* Appeals.)
In execution of judgments 936–940
(*See* Judgments, execution of.)
In executory actions..... 1467–1469
Examination:
Of books, papers, etc., how to be made 570
Classification, etc., of credits against bankrupts 1376–1379
And deposit of commercial effects 2080–2088
Exceptions:
Judges taking cognizance of an action have jurisdiction, etc., over..... 55
Dilatory 531–538
If pleaded by defendant, no answer required, etc 531
What are admissible as 532, 533
When to be pleaded..... 534
How to be pleaded 535
To be referred to plaintiff..... 536
What exceptions to be decided first, etc..... 537
Which can be pleaded in answer to complaint..... 541
And counterclaim to be heard at same time 543
Of *res judicata* to be heard separately 543
Which may be pleaded by defendant in action of lesser import..... 686
Which may be pleaded in executory actions 1462–1464
Execution of judgments. (*See* Judgments.)

Executory process 1427–1478
Executory action to be based on act importing confession of judgment ... 1427
Instruments which import a confession of judgment 1427
Signature of private document to be acknowledged 1428, 1429
Citation of debtor 1430
When execution to issue 1431, 1438
Confession does not constitute an instrument importing confession of judgment 1432
For what execution can issue 1433, 1434
How value of debt to be computed 1434, 1435, 1436
Preparation of complaint 1437
Appeal from ruling denying execution 1439
Proceedings after execution has been issued 1440–1442
Deposit of amount claimed 1444
Order in which attachment to be levied 1445
Railways, etc., no attachment can be levied on 1446
Bed in daily use can not be attached 1447
Property exempted from attachment 1446, 1447
Attachment of salaries, pensions, etc 1448
Attachment of real property 1451
Creditor may select property 1452
When increase of attachment to be ordered 1453
Notice of sale to be served on debtor 1457
Manner of serving notice 1457–1458
Objection of debtor to execution 1459–1461
Exceptions which can be pleaded in executory action 1462–1464
Basis for request to vacate execution 1465
Objection to be referred to plaintiff 1466
Submission of evidence 1467–1469
Citation for judgment 1470
When judgment to be rendered 1471
Taxation of costs 1443, 1472, 1473
Appeal from judgment ..... 1474 et seq.
Judgment does not give rise to exception of *res judicata* 1477
Questions of competency 1478
Consolidation 1478

Expert:
Fees of 422, 426–428
Must have a diploma 614
Evidence of, is means of proof 577
Opinions 609–631
When expert testimony may be used 609
Number of experts to be fixed by person requesting 610
Term within which to agree upon 613
When judge to select 615
Challenged, not to be appointed 616
When they may be challenged 618
How challenge of, to be interposed 619
What are legitimate causes of challenge 620
Procedure after challenge presented 623
Challenging party, when to pay costs 624
To make their report in writing or orally 626
Explanations which may be requested of 627
How three experts to give their report 628